RECOVERY OF OVERCHARGES

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

H. R. 8742, H. R. 8743, and S. 377

BILLS TO AMEND THE INTERSTATE COMMERCE ACT TO PROVIDE A 2-YEAR STATUTE OF LIMITATIONS ON ACTIONS INVOLVING TRANSPORTATION OF PROPERTY AND PASSENGERS OF THE UNITED STATES GOVERNMENT AND TO PROVIDE THAT DEDUCTIONS FOR OVERCHARGES BY THE UNITED STATES SHALL BE MADE WITHIN 3 YEARS FROM TIME OF PAYMENT

APRIL 30 AND MAY 1, 1958

Printed for the use of the Committee on Interstate and Foreign Commerce

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RECOVERY OF OVERCHARGES

WEDNESDAY, APRIL 30, 1958

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMUNICATIONS
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 1333, New House Office Building, Hon. Oren Harris (chairman) presiding.

The CHAIRMAN. The committee will come to order.

This morning the committee has met to hear witnesses on three bills, S. 377, H. R. 8742 and H. R. 8743. The purpose of these bills is to amend the Interstate Commerce Act so that the 2-year statutory period of limitation on actions for the recovery of charges, damages, or overcharges shall apply to shipments involving the United States Government and the carriers in substantially the same fashion as it now applies to commercial shippers and the carriers.

I might say that this is a problem that this committee has considered heretofore, and I think bills enacted have had either 1 or 2 vetoes. I am not sure which.

Mr. O'HARA. I did not know we ever reported a bill out.

The CHAIRMAN. I know one has received a veto.

The bills referred to will be included in the record at this point, and the reports.

(The bills and reports referred to follow:)

[H. R. 8742, 85th Cong., 1st sess.]

A BILL To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the

date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however*, That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted."

SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

(NOTE.—H. R. 8743 is identical with H. R. 8742 and is not printed herewith.)

[S. 377, 85th Cong., 1st sess.]

AN ACT To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States

in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision: "*Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation."

SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

Passed the Senate August 8 (legislative day, July 8), 1957.

Attest:

FELTON M. JOHNSTON, *Secretary.*

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D. C., November 27, 1957.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR CHAIRMAN HARRIS: Your letter of July 18, 1957, address to the chairman of the Commission and requesting a report and comments on a bill, H. R. 8742, introduced by Congressman Flynt, to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

H. R. 8742 would amend section 16 (3) of part I of the Interstate Commerce Act, which applies principally to railroads, and section 240a of part II, section 308 (f) of part III, and section 406a of part IV, which are applicable to motor carriers, water carriers, and freight forwarders, respectively, so as to provide specifically that the 2-year statutory period of limitation on actions for the recovery of charges, damages, or overcharges shall apply to shipments involving the United States Government and the carriers in substantially the same fashion it now applies to commercial shippers and the carriers.

In a number of complaints filed with the Commission by the Government seeking damages against railroads for the transportation of property at rates and charges alleged to be in violation of the Interstate Commerce Act, the Government has contended that the 2-year period of limitations does not apply to complaints brought by the United States. The Commission, however, has taken the position that the statutory period does apply to such actions and has dismissed complaints when the cause of action accrued more than 2 years prior to the date the complaint was filed. H. R. 8742 would settle this question by specifically providing that the limitation shall apply to complaints filed with the Commission by the Government as well as to complaints filed by other shippers.

With respect to the question of when the cause of action shall be deemed to accrue, the bill would amend sections 16 (3) (c), 204a (4), 308 (f) (2), and 406a (4), by adding a provision, limited to actions at law by carriers against the Government and to complaints or actions at law filed by the Government against carriers that such cause shall be deemed to accrue upon "the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later." This differs from the provisions governing actions at law by carriers against commercial shippers, or complaints filed with the Commission or actions at law instituted against carriers by commercial shippers, in which the cause of action is deemed to accrue upon delivery or tender of delivery of the shipment by the carrier, and not after.

This difference in treatment appears necessary, since the Government is required, under section 322 of the Transportation Act of 1940 (49 U. S. C., sec. 66), to pay transportation charges of common carriers upon presentation of bills therefor prior to audit by the General Accounting Office. However, the right is reserved to the Government "to deduct the amount of any overpayment to any such carrier [a common carrier subject to the Interstate Commerce Act] from any amount subsequently found to be due such carrier," but the right to make such deduction is not limited as to time. H. R. 8742 would amend section 322 in this connection by requiring the Government to exercise such right within 3 years from the time of payment of the bills. This appears to be a reasonable limitation and would bring the right more nearly in line with commercial practice. Moreover, it hardly seems fair that the carriers should be subject, as at present, to deductions for as many years as suits the convenience of the Government. It is noted in this connection that no exception is made to this limitation during time of war as provided in S. 377 (as passed by the Senate on August 8, 1957), which is also pending before your committee. It is further noted that no provision is made, as in the Senate-passed bill, to make the same 3-year period of limitation applicable to claims "cognizable by the General Accounting Office" for charges for transportation within the purview of section 322. This appears to be a reasonable requirement, since it would subject the Government and the carriers to the same period of limitation. The committee may, therefore, wish to consider such an amendment to H. R. 8742.

In addition, the bill would change the word "overpayment" in section 322 to mean "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act. "In section 16 (3) (g) of the Interstate Commerce Act and in the corresponding sections of the other parts of the act, the term "overcharges" is defined as meaning "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission," except that the word "transportation" is omitted in section 406a (5) of part IV. This substitution would make it clear that while the Government may deduct from current accounts with a carrier amounts claimed to have been paid in excess of the applicable tariff rate, it may not deduct amounts resulting from the charging of rates alleged by the Government to be unreasonable or unduly prejudicial or otherwise unlawful, although applicable because specified in the tariffs.

In our opinion, the provisions of H. R. 8742 are desirable to prevent undue and unreasonable delays in the submission of controversies to the Commission or the courts which involve disputes between the Government and the carriers arising under the Interstate Commerce Act. We therefore recommend its enactment.

Editorially, it appears that the section reference "406 (a) (4)" in line 14, page 3, of the bill should be changed to "406a (4)." It also appears that the words "or passengers" in lines 16 and 24, page 3, should be deleted, since freight forwarders perform no passenger services. Also, in our opinion, the amendatory language in section 9 (1) of the bill would be improved by substituting the words "or any" for "and" in line 7, page 4. It further appears that the period after "Act" in line 9, page 4, should be outside, rather than within, the quotation marks.

Respectfully submitted.

OWEN CLARKE,
Chairman, Committee on Legislation.
ANTHONY ARPAIA.
ROBERT W. MINOR.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., April 29, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letters of July 18 and August 13, 1957, requesting the views of the Bureau of the Budget on H. R. 8742 and S. 377, similar bills to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment.

The objective of this proposed legislation conforms to the President's desire, expressed in his memorandum of disapproval of S. 906, 83d Congress, that the Government should be subject to limitations upon retroactive review of its freight charges equivalent to those imposed upon commercial shippers. Sections 1 through 8 of H. R. 8742 and S. 377 incorporate provisions of draft bills submitted by the Department of Defense and the General Services Administration for consideration of the Senate Committee on Interstate and Foreign Commerce. These sections would impose a 2-year limitation upon the submission of controversies to the Interstate Commerce Commission or the courts arising between the Government and carriers under the Interstate Commerce Act and accruing from the date of payment or subsequent collection of overcharges.

Section 9, not a part of the above draft bills, would redefine the types of Government payments for which an administrative collection of overcharges may be made upon audit under the provisions of the Transportation Act of 1940, and would limit the period during which authorized administrative deductions may be made to 3 years from the time of payment of bills.

In order to make the limitations proposed in sections 1 through 8 fully effective, some appropriate limitation upon the period which deductions may be made to carriers' accounts following audit, such as is included in section 9 (2) appears desirable. As presently worded, section 9 (1) would preclude recovery by administrative action of overpayments resulting from clerical error by the Government or overpayments from any cause which have been made to air car-

riers. These effects would appear to be clearly undesirable. In addition, enactment of the section would have the effect of shifting the burden of initiation of litigation or rates, the lawfulness of which are in dispute, from the carriers to the Government. It is believed that this provision will increase administrative expenses and increase the volume of litigation. Your committee may, therefore, wish to examine with particular care the need for making this change in existing procedures.

S. 377 and H. R. 8742 are distinguished by certain technical differences appearing in section 9 relating to the suspension of the period of limitation during time of war and to the presentation of claims by carriers which are cognizable by the General Accounting Office. It is believed that if legislation is enacted, that provisions relating to these matters similar to those presently incorporated in S. 377 should be included. It is suggested that the wartime suspension might more appropriately be invoked during any period of emergency declared by the President.

Subject to the above reservations, the Bureau of the Budget recommends enactment of this legislation.

Sincerely yours,

PHILLIP S. HUGHES,
Acting Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 31, 1957.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letter of July 18, 1957, asking for a prompt report, together with such comment as we may desire to make on H. R. 8742.

This bill would amend parts I, II, III, and IV of the Interstate Commerce Act, as amended, by providing that the limitations included in sections 16 (3), 204a, 308 (f), and 406a of the act "shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers" and that with respect to such transportation "the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

This bill also proposes to limit to 3 years the time in which overcharges could be recovered by the United States by deduction of such overcharges from amounts otherwise found due the overpaid carrier, but section 322 of the Transportation Act of 1940 (49 U. S. C. 66), would still provide for the payment of carriers' bills upon presentation, prior to audit and settlement by the General Accounting Office. In addition to the time limitation on the right to recover overcharges by setoffs, section 9 of H. R. 8742 would make another significant change in the language of section 322 by limiting such recovery to an "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act" instead of the presently specified "overpayment" which may be recovered.

It should be noted that the carriers which would be affected by the provisions of H. R. 8742 presently are allowed 6 full years from the date when the cause of action first accrues in which to bring suit against the United States in the Court of Claims or the United States district courts to recover their transportation charges (28 U. S. C. 2401 and 2501), and 10 full years after a claim cognizable in the General Accounting Office first accrues in which to file such claim here (31 U. S. C. 71a and 236). While H. R. 8742, if enacted, apparently would limit the carriers, as well as the United States, to 2 years in which to file suits in the courts or, in the case of the latter, the alternative of filing complaints with the Interstate Commerce Commission, its enactment apparently would have no effect on the 10 years allowed for the filing of such claims against the United States in our Office. Accordingly, if H. R. 8742 is favorably considered, it seems appropriate that Congress consider for adoption legislation excluding transportation claims from the purview of title 31, United States Code, sections 71a and 236. Action to this end would help maintain an equality of position insofar

as the carriers and the Government are concerned as to claims cognizable in the General Accounting Office, if section 9 of H. R. 8742 is made law.

If a limitation of 2 years should be imposed within which suits might be brought either by a carrier or by the United States it simply would mean that suit would be brought within that time on numerous uncollected items involving disagreement, and the dockets of the Federal courts, already seriously in arrears, would be further heavily encumbered by many additional transportation suits on matters susceptible of administrative adjustment but for such time limitation.

Frequently, it has been said that the United States is the largest single user of the freight and passenger transportation services of the carriers. Some idea of the extent of its use of carrier services may be obtained by a brief review of our annual reports to the Congress for the fiscal years 1951 through 1956, inclusive. Such reports show that during those 6 years we completed the audit of more than 21 million bills of lading and a like number of transportation requests, on which there was paid to the carriers more than $3,940 million for the transportation of property and more than $1,104 million for the transportation of persons for or on behalf of the United States. All of these disbursements were made prior to audit and settlement in the General Accounting Office, pursuant to the provisions of section 322 of the Transportation Act of 1940 (49 U. S. C. 66). In the course of our audit for the above fiscal years, we found overpayments aggregating more than $88 million on the freight movements and more than $12 million on the passenger movements, or a total of more than $100 million. Our annual reports further show that the above totals did not include any of the World War II transportation disbursements which were being reaudited during those 6 fiscal years.

At the close of fiscal year 1951, we reported a backlog of some 30 months' transportation disbursements which had not at that time been audited, and at the close of fiscal year 1956 we had on hand a backlog of about 27 months' disbursements which had not as yet been reached for audit. The reaudit of the World War II disbursements for such services has now been substantially completed and most of our technicians heretofore engaged in that task have already, or soon will be. assigned to the current audit, so that by the end of fiscal year 1958, we expect to substantially reduce the timelag between payment administratively and audit by our Office. However, for the time being, the lag between payment and audit will continue to represent a considerable portion of the 2-year limitation proposed by H. R. 8742 for the initiation of actions before the Commission or the courts to recover overcharges in appropriate cases. So long as this condition prevails, only a relatively short period of time will be available for the audit of transportation payments made administratively without prior audit, the statement of overcharges determined here, and in appropriate instances, for the preparation and analysis of data and information necessary for the filing of complaints with the Interstate Commerce Commission, or the courts, for the recovery of overcharges which cannot otherwise be recovered by setoffs, in proper cases, from amounts otherwise due the carriers, pursuant to section 322 of the Transportation Act of 1940 as amended.

We are, of eourse, constantly reviewing our procedures with respect to the audit of transportation disbursements with the view toward improvements and changes designed to speed up the audit and to shorten, where possible, the timelag between payment and audit. However, the volume of such payments, the lack of properly trained rate technicians, the insufficiency of the records respecting many of the individual transactions (necessitating development through investigations and correspondence with the shipping agencies and the carriers of pertinent supplemental data needed to complete the audit action), and other factors, operate to retard our efforts to accelerate our audit procedures. It is not believed that the carriers would favor an audit prior to payment of their bills.

We have in the past concurred in legislative proposals to impose a reasonable limitation on actions involving section 22 quotation arrangements, but H. R. 8742, as introduced, would apparently involve all payments made by the United States to common carriers and freight forwarders for transportation services without regard to the kinds of rates applied for such services. Carriers already are specially favored through payment of their billings as presented without prior audit here. If there are cogent reasons for further favoring carriers over other parties who have obtained overpayments of public money those reasons are not readily apparent. In view of the volume of such payments and the difficulties in accomplishing a prompt audit of the payment made administra-

tively, we are not at all convinced that the limitations on actions to recover excess charges paid pnrsnant to section 322 would be in the public interest. Certainly, as to time of war or national emergency, when transportation disbursements can reasonably be expected to be greatly increased, we are of the view that the limitations here proposed would seriously curtail recoveries of excess charges that might be paid in the future prior to our audit, in accordance with the provisions of section 322 of the Transportation Act of 1940, as amended.

As to the proposal contained in section 9, page 4 of H. R. 8742, for the snbstitntion of the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pnrsnant to section 22 of the Interstate Commerce Act" for the word "overpayment," we have long viewed payments made for the transportation of Government property in excess of the lawful, as distinguished from the legal, rates on file with the Interstate Commerce Commission as overpayments subject to recovery by the United States, where the unlawfulness of such excess rates has been established generally by judicial or Commission precedent. We have considered it our right and duty to give effect in our audit to establish principles of tariff construction, as ennnciated by the Interstate Commerce Commission and the conrts in making a determination as to whether or not an overpayment has been made in a given instance. Thus, when we have found that charges were paid on basis of a rate which, though legally published in a tariff on file with the Interstate Commerce Commission, in comparable circumstances the Commission has declared to be prima facie unlawful in violation of some particular provision of the Interstate Commerce Act, we have treated as an overpayment that portion of the total charges paid in excess of just and reasonable and otherwise lawfnl charges for the services rendered.

As an illustration, both the Commission and the conrts have consistently declared that a through rate which exceeds the aggregate of intermediate rates to and beyond a point through which the through rate applies is prima facie unreasonable to the extent that it exceeds the aggregate of intermediate rates. Likewise, it has been consistently held, in cases where a shipper does not specify any particnlar rate, that misrouting on the part of an initial carrier of a shipment resulting in charges applicable via the route of movement higher than would otherwise obtain had a lower rated route been selected by the initial carrier, over which the nnrouted shipment conld have been transported to the designated destination, is an unreasonable practice, and that the shipper should not be penalized by the negligence of the initial carrier in misrouting the shipment. As stated, we have given effect to these and other principles in decided judicial and Commission proceedings, which furnish anthority for the adjnstment of similar transactions in our audit.

If the substitution of the "overcharge" phrase for the word "overpayment" is given effect it would seem that the only relief then available to the Government from excess charges not based on an "overcharge," as proposed to be defined, would be through complaint to the Interstate Commerce Commission for a determination of the lawfnlness of the excessive charges paid. Even if the Government prevailed in snch a proceeding before the Interstate Commerce Commission, in instances where the services were rendered by motor carriers, it would then be necessary to sue the motor carriers in a court of competent jnrisdiction to recover the excess charges so paid, since part II of the Interstate Commerce Act does not authorize the Commission to issue an order for the payment of reparation for the exaction of unlawful charges by a motor carrier.

It is our firm belief that the proposal contained in section 9 of H. R. 8742 to restrict the right of recovery by deduction to 3 years after date of payment of bills wherein overcharges are noted, if enacted, will preclude recoveries of substantial snms of overpayments which properly should be restored to the pnblic Treasury. We feel that the present proposal of 3 years should be expanded to 6 years.

However, if the 3-year provision is to be given favorable consideration it wonld be in the public interest to provide for the suspension of the running of the proposed 3-year limitation dnring time of war and for a reasonable time following the cessation of hostilities as proclaimed by the President or by a concnrrent resolution of the Congress.

For the reasons stated, we do not believe that the provisions of H. R. 8742 would be in the public interest. Snch a proposal reasonably can be expected to increase the workload and expenses of the General Accounting Office, the

Department of Justice, the Interstate Commerce Commission, the administrative departments and agencies of the Government, as well as those of the carriers involved.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 2, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 8742, 85th Congress, a bill to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The purpose of H. R. 8742 is to insert a provision in section 16 (3) of part I of the Interstate Commerce Act and in related provisions of parts II, III, and IV of that act specifying that the stated 2-year limitation applies to Government traffic. The present 6-year provision now applicable to suits by carriers against the Government would thereby be reduced to 2 years. In addition the period for action by the Government to obtain review of rates charged it, now contended to be unlimited in pending litigation, would be fixed at 2 years from the date of the accrual of the cause of action. Section 9 of this bill would amend section 322 of the Transportation Act of 1940 to provide that deductions for overcharges by the United States shall be made within 3 years from the time of payment of bills wherein overcharges are noted.

H. R. 8742 is identical to H. R. 8743 and substantially similar to S. 377, as amended and passed by the Senate on August 8, 1957. Sections 1 through 8 of these bills are in practical effect an adoption of the draft bill proposed by the Department of Defense as a substitute for S. 377 in its original form and section (b) of H. R. 3233, 85th Congress. The Department of Defense opposed enactment of S. 377, as introduced in the Senate and section (b) of H. R. 3233 because such legislation would place the Government in a position inferior to that now enjoyed by commercial shippers who may question the reasonableness of published rates at any time following publication. The only limitation on the appeal by commercial shippers is that recovery is limited to the 2-year period preceding the filing of the action. S. 377 in its original form and section (b) of H. R. 3233 were similar to S. 906, 83d Congress, which passed both Houses of Congress but was vetoed by the President on September 2, 1954, for substantially these same reasons. In withholding his approval the President stated, "I see no reason why the Government should not be subject to the same limitations on retroactive review of its freight charges as a commercial shipper. That result could be accomplished equitably by an amendment to section 16 (3) of the Interstate Commerce Act specifying that the Government shall be subject to the 2-year limitation presently applicable to commercial shippers * * * I recommend that such legislation be enacted at the next session of the Congress."

Paragraph (1) of section 9, of H. R. 8742, would substitute other language for the word "overpayment" in section 322 of the Transportation Act of 1940. This change would have two effects adverse to the Government. First, the new language reserves the right to deduction of overcharges with respect to carriers subject only to the Interstate Commerce Act, thus abandoning such reservation with respect to air carriers subject to the Civil Aeronautics Act. Second, since "overpayment" is broader than "overcharge" because it includes errors of the payer as well as the receiver of money, the new language would technically, and unjustly, fail to reserve the right to make deductions where mathematical or administrative errors have been made in the disbursing office. It is understood that other objections to both paragraph (1) and paragraph (2) of section 9 have been expressed, relating to matters which primarily concern the General Accounting Office and the Department of Justice.

Subject to the exception indicated in the preceding paragraph, the Department of the Army, on behalf of the Department of Defense, supports enactment of H. R. 8742.

The fiscal effects of this bill cannot be estimated.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the Congress.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C., April 30, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Your letter of July 18, 1957, requests comments from GSA concerning H. R. 8742, a bill to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment.

The provisions of this bill are comparable to an alternative proposal submitted by GSA in commenting on H. R. 3233, also pending at this time. However, H. R. 8742 proposes an additional provision which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66), having the effect of restricting the present unlimited period for making deductions of overcharges to a 3-year period. The latter provision is of primary concern to the General Accounting Office, and it is assumed comments will be obtained from the Comptroller General.

It would appear from our examination that the enactment of this bill would not involve increased costs to civilian executive agencies.

GSA supports the objectives of H. R. 8742, and favors the enactment of legislation of this nature subject to the foregoing comments.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE, *Administrator.*

The CHAIRMAN. I have a report from the Bureau of the Budget, which, interestingly enough, says, with certain reservations, that the Bureau recommends enactment of the legislation.

The report of the Interstate Commerce Commission is favorable.

The report of the Comptroller General is adverse.

Since these bills are similar in nature and purpose, and 2 of them are identical, with very small differences in the Senate bill, they are all 3 combined in the course of these hearings, and I ask the witnesses to refer to them accordingly.

The first witness this morning will be Mr. Edwin L. Fisher, General Counsel for the General Accounting Office.

STATTEMENT OF EDWIN L. FISHER, GENERAL COUNSEL, ACCOMPANIED BY JAMES A. McDONNELL, ASSOCIATE DIRECTOR, GENERAL ACCOUNTING OFFICE

Mr. FISHER. And I have Mr. McDonnell with me.

The CHAIRMAN. Mr. McDonnell is the Associate Director, Transportation Division.

Mr. FISHER. That is right.

The CHAIRMAN. All right. We will be glad to hear from you, Mr. Fisher and Mr. McDonnell, since, apparently, we are starting off in reverse here this morning, with the opposition first.

Mr. FISHER. Mr. Chairman, my name is Edwin L. Fisher. I am General Counsel of the General Accounting Office. And sitting right behind me is Mr. James A. McDonnell, the Associate Director of the Transportation Division.

I have a prepared statement, but I would like to make a comment or two before I read that.

One has to do with your reference to the opposition of the General Accounting Office. We are not here this morning in any attempt to kill this bill. We are not here in opposition to the general purpose of the bill.

We do think there are a couple of points that we would like to have clarified, and we will address ourselves to those particular points.

We appreciate the opportunity afforded the General Accounting Office of appearing before your committee with respect to S. 377 and H. R. 8742 and 8743. Our principal interest concerns itself with the proposed limitation of 2 years to be imposed upon the United States within which to file actions at law and complaints before the Interstate Commerce Commission to effect recoveries and overpayments and, also, the proposed amendment in section 322 of the Transportation Act of 1940 (49 U. S. C. 66), changing the word "overpayment" to "overcharge as defined in the Interstate Commerce Act."

We have previously recommended to the House Committee on Interstate and Foreign Commerce that consideration be given to changing to 6 years the 3-year period of limitation on deduction action by the Government now set forth in the proposed legislation—our letter of August 20, 1957, B–97532, B–108119.

As you are aware, the General Accounting Office, as a part of the legislative branch of the Government and an agent of the Congress, is charged in section 322 of the Transportation Act of 1940 with the responsibility for recovering from common carriers, subject to the Interstate Commerce Act and the Civil Aeronautics Act, amounts overpaid for transportation services furnished the United States.

Presently, there exists no statutory bar as to the time within which the United States must proceed in order to effect such recovery of transportation overpayments, whether by deductions or actions at law, and the present bills, while granting us 3 years within which to effect collections by deductions, would limit to 2 years after date of payment the period within which the United States could institute actions at law and proceedings before the Interstate Commerce Commission.

While our Office is constantly seeking to improve its procedures, and will make such arrangements as will be necessary if these bills become law, it would appear that, for the better protection of the Government's interest, any statutory bar for filing suits in the courts or complaints in the Interstate Commerce Commission should cover a time period not less than 3 years, as now proposed to be granted the United States for effecting deductions, since we would be compelled to act on the basis of a 2-year rather than a 3-year cycle in our auditing operations as to transportation accounts.

Unquestionably, we would have to accelerate our procedures for the filing of suits, particularly in instances where current accounts of overpaid carriers are not available for offset.

The 2-year and the 3-year limiting provisions in the proposed amendments are inconsistent, and it is our view that, since it is the purpose of the proposed legislation to limit to 3 years the right of the United States to effect collection of overcharges, a lesser period should not be made available within which to file suits in collection proceedings.

Our Office is charged with determining whether all payments made by Government agencies to all carriers of all types are not in excess of those properly due, and the undertaking involved is enormous in comparison with the operations of each of the individual carriers which are concerned primarily with their particular operations.

It is doubtful whether our Office could discharge in the most effective way its responsibilities of auditing, adjusting, and developing matters for suit by the Department of Justice within a short space of 2 years.

The technical audit for 4 million to 5 million bills of lading and 3 million to 4 million transportation requests and the development and issuance of 200,000 separate debt notices each year in connection therewith and processing them to a conclusion is the burden to which the limitation of 2 years must be related.

Also, since the proposed period for deductions by the United States and the filing of claims by carriers in the General Accounting Office, as set out in S. 377, is consistent at 3 years, consistency, likewise, would appear to require a minimum of 3 years as to actions by the United States in the courts and before the Interstate Commerce Commission.

With respect to the change proposed in section 322 of the Transportation Act of 1940 (49 U. S. C. 66), the word "overpayment" would be changed to "overcharge as defined in the Interstate Commerce Act," et cetera.

It is noted that the present language of section 322 applies also to carriers subject to the Civil Aeronautics Act. This act does not define "overcharges" and, understandably enough, confusion could arise if the language remains as it is without appropriate reference to overcharges by air carriers subject to the provisions of the Civil Aeronautics Act. This, possibly, can be remedied by changing the word "overpayment" to "overcharge" and adding a new sentence to this paragraph to read:

> The term "overcharge" shall include charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board, and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act.

We urge, however, that there be considered our recommendation against the adoption of this proposed provision.

As stated in our reports to this committee on the subject, we have considered it our duty to give effect in our audit to established principles of tariff construction, as enunciated by the Interstate Commerce Commission and the courts in making a determination as to whether an overpayment has been made in a given instance. Thus, when we have found that charges have been asserted and paid to a carrier on

the basis of a tariff rate, though duly published and filed with the Interstate Commerce Commission, which the Commission has declared in a comparable situation to be prima facie unlawful as being in violation of some provision of the Interstate Commerce Act, we have treated this as an overpayment and have taken action to recover the amount in excess of that determined to be reasonable.

Such action was recognized as valid and proper in the case of the *United States* v. *Western Pacific Railroad Co.* (352 U. S. 59).

In each such instance we have fully explained our action to the carrier by reference to the Commission decisions and legal principles which support our action.

The proposed legislation, if enacted, would require our office in instances of the kind described to abandon its long-established position as auditors and accounting officers for the Government of refusing to approve payments in excess of a lawful basis as laid down in some prior determination by the Interstate Commerce Commission, and require us to proceed in each such instance to initiate separate litigation before the courts or the Commission.

In conclusion, we urge, therefore, that any legislation to be enacted should provide for a period of not less than 3 years within which the United States could bring suit or file complaints before the Interstate Commerce Commission to enforce its rights. This period is consistent with the period proposed within which our Office could effect recoveries by deduction and within which carriers could file claims against the United States.

That concludes my prepared statement, Mr. Chairman.

While I cannot speak for the industry, I have reason to believe that they may not object to this increase from 2 years to 3 years. The question of overcharges is something else.

We will be glad to answer any questions that the committee might have.

The CHAIRMAN. Thank you very much, Mr. Fisher.

Mr. Flynt, do you have any questions?

Mr. FLYNT. Mr. Fisher, are you familiar with the similar legislation which was passed by both Houses of Congress and vetoed in the 83d Congress?

Mr. FISHER. I don't recall the details, but our Office reported on those bills, too.

Mr. FLYNT. I wonder if you recall that at that time similar legislation to this was proposed and passed by the Congress, which set up a 6-year period as opposed to the 2-year period set forth in the pending legislation?

Mr. FISHER. Yes, sir.

Mr. FLYNT. I wonder if I am correct in my recollection of my study of this, that the veto message stated that the executive branch felt that the period within which the Government could file claims should be the same as the statute-of-limitations period defined for individuals?

Mr. FISHER. That is correct.

Mr. FLYNT. And it was perhaps for that reason that the legislation introduced during the 85th Congress provided for that period.

Frankly, I am inclined to agree that 2 years is a very, very short time. It is shorter than any similar or comparable statute of limitations which exists in my own State, and I think in practically all

States, and I am delighted at the language of your statement from which we gain the impression—and I wonder if you intended us to gain the impression—that if a period which you in the General Accounting Office consider a more reasonable period was to be substituted for the 2-year period, you would have no objection to such legislation if that can be extended beyond the 2-year period contained in the bill.

Mr. FISHER. That is correct, sir.

As we indicated in our reports, we prefer 6 years, but we have no objection to this legislation if it goes through with the 3-year period.

Mr. FLYNT. You said you feel that the Government ought not to be placed at a disadvantage and should not be bound to a lesser period than the carrier has to file a claim in the event of an undercharge.

Mr. FISHER. We can recover an overpayment within 3 years now. We do a lot of negotiating with these carriers when questions arise. It takes time. Sometimes we come to an agreement and there is no problem.

If we are negotiating or discussing what we think is an overpayment, we can do that up to 3 years and collect it, but once we get past the 2-year period to start with, if the carrier refuses to pay we cannot sue.

We would like at least to have consistency in our right to recover by overpayment or by suit.

Mr. FLYNT. I have no further questions at this moment.

The CHAIRMAN. Mr. Wolverton?

Mr. WOLVERTON. I think there is some merit in the suggestion that you have made with respect to the 2-year and the 3-year period being identical rather than different as provided.

May I ask what is the limitation now with respect to private shippers of a similar character?

Mr. FISHER. That is 2 years.

Mr. WOLVERTON. Why do you think the Government should have 6 years?

Mr. FISHER. As I say, I am not arguing for 6 years. But this is the problem we have: In the first place, the average private shipper is shipping the same commodity all the time, or the same group of commodities all the time. They know pretty well what applies to that. The Government is shipping things almost every day that have never been shipped before. We have unique commodities—the military types of weapons and bombs and whatnot—with which there has been no previous experience.

But there are lots of arguments as to what tariff rates apply to these things when we enter into discussions with these carriers. For example, we may run across a bill of one carrier and start discussing that today, and we know that in the near future we are going to run into bills of maybe all of the other carriers on that same commodity. We don't want to have to file suit or even summarily collect an overpay-payment on that, and then as each other bill comes in from a different carrier file a suit on that.

By discussing it with these carriers and with the associations we have some chance to work those things out to the mutual agreement and advantage of everybody without litigation.

Mr. WOLVERTON. What, if any, provisions exist with respect to the right of the railroad to recover for undercharges which have been made by mistake?

Mr. FISHER. They can file a claim with us for a period up to 10 years.

Mr. WOLVERTON. Ten years?

Mr. FISHER. With the General Accounting Office. Our statute of limitations generally is 10 years on claims recognizable by the General Accounting Office against the Government.

Mr. WOLVERTON. What is your opinion with respect to that limitation? That seems to me a very unusual length of time.

Mr. FISHER. It is, and we don't like it, and we recommended against it. But prior to about 1940 there was no statute of limitations on claims cognizable by us. We were getting claims arising out of the Revolution. But Congress passed this bill and we recommended a 6-year period, which is the same period in which people can go into the court. We wanted some consistency there. But, for some unexplained reason, there was a 10-year limitation put on.

Mr. WOLVERTON. What would be your view with regard to having similarity to the limitations with respect to the Government and the industry in this particular matter?

Mr. FISHER. I cannot speak for the shipping industry, and how it would affect the railroads to have two different periods. They have two different periods now.

Of course, the Government is the biggest shipper. I would see no objection, of course, to having uniformity if we can have more than 2 years, but 2 years is the present statute.

Mr. WOLVERTON. Is there any difference in the situation whether it is an overcharge or an undercharge that would require a different time limitation?

Mr. FISHER. No, but in this bill it would.

Mr. WOLVERTON. I am speaking of it from a general standpoint; not particularly from this legislation.

Mr. FISHER. I think the limitation ought to be the same on an overpayment or undercharge.

Mr. WOLVERTON. I was trying to ascertain if you, because of your experience in these matters, believe that there was any difference in the type or character of accounting that would make it necessary to have a different time.

Mr. FISHER. I don't know of any reason that it should? Of course, we do have one problem if we are cut down to a 2-year period here for filing suits. Under our present arrangement with the carriers generally we send them a notice of an overpayment, but we don't collect it. We give them the chance to send in a check to pay for it. It simplifies their accounting practices, and they have desired that. So that most of our collections are made by voluntary remittances by the carriers.

If we are compelled to work so swiftly here in a 2-year period we will have trouble keeping up that arrangement.

Mr. WOLVERTON. Suppose the 2-year limitation fixed by the bill has expired and subsequent thereto you find that there has been an overcharge. Would that 2-year limitation prevent you from making that as an offset?

Mr. FISHER. I would think so; yes, sir. I think we could ask them to pay it back, but if we had no right in court to enforce that action I think we would have difficulty making the collection.

Mr. WOLVERTON. I have in mind the twilight period, we might call it, between the 2-year limitation and the 3-year limitation.

Suppose it should become apparent to the Accounting Office that there had been an overcharge; you had not noticed it before the 2-year period had elapsed, but you did notice it before the 3-year period elapsed. Would you during that period have the right to offset it against any pending bills?

Mr. FISHER. I would say that is very doubtful, and, of course, that is liable to happen. But what we are going to have to do is almost to forget about that third year and try to accomplish everything within the first 2 years so that we can sue if we have to.

Mr. WOLVERTON. Would you repeat to me again just what the limitation is with respect to private shippers?

Mr. FISHER. Two years, a 2-year period.

Mr. WOLVERTON. Two years.

Mr. FISHER. That is right, and it always has been.

Mr. WOLVERTON. There is no difference between the two limitations, 2-year or 3-year? It is all 2 years? They must bring suit within 2 years?

Mr. FISHER. Yes, sir. They generally pay in advance. They don't have the opportunity of offsetting an overpayment afterward.

Mr. WOLVERTON. You say they would not be confronted with that same difficulty that I have in a way visualized of offsetting?

Mr. FISHER. I don't see how they would be. Of course, the situation with respect to the United States is different and that is why these bills are here. Now, we have 6 years. The carrier has 6 years to go into the Court of Claims, and we have an unlimited period.

Mr. WOLVERTON. How many employees in the General Accounting Office are now performing the duties as the law presently is?

Mr. FISHER. 1,200.

Mr. WOLVERTON. Do you visualize that there would be an increase, and, if so, how many, if the law were changed?

Mr. FISHER. I would not want to categorically say there would be an increase. I think this would happen. There would be a terrific increase in the number of suits filed by the General Accounting Office. It seems to me it would put an awful burden on the Department of Justice because we could not wait past the period of 2 years. We would have to file suit and quit these negotiation practices that we have had up to now.

Mr. WOLVERTON. Do you mean those suits would increase because of your increased activity that would require you to know before the 3-year period was up, or would you just take chances on a sort of a cursory or, you might say, a spotcheck accounting?

Mr. FISHER. It would increase for 2 or 3 years. One reason is this change from overpayment to overcharges. If that is changed when we think there is an overpayment as distinguished from an overcharge, we have no right to collect; we have to sue if we are going to recover.

So, in each one of those cases we would have to sue where now we go out and negotiate with the carriers and, I presume, most times satisfactorily resolve it without litigation. But we would have to file a suit within 2 years in all of those cases.

Mr. WOLVERTON. Did you say you would have to bring a suit within 2 years?

Mr. FISHER. Yes, sir; if you change that word "overpayment" to "overcharge" we cannot collect by offset. We have to sue or go to the Interstate Commerce Commission.

The CHAIRMAN. Would the gentleman yield to me?

Mr. WOLVERTON. Certainly.

The CHAIRMAN. For the record and for my information, what is the difference? How do you distinguish between the words "overcharge" and "overpayment"?

Mr. FISHER. Overcharge is defined in the Interstate Commerce Act, and we consider an overpayment as distinguished from overcharge would arise where the carrier has a tariff on file with the Interstate Commerce Commission, and, to all intents and purposes, it looks like it is perfectly legitimate, but it is unreasonable in this respect: I will give you an example.

A shipment from here to Chicago of any commodity might call for a certain rate. Let's say a dollar. But if we ship from here to Pittsburgh, to Lima and Fort Wayne, the total of all those segments is less than the through charge. Generally speaking the Interstate Commerce Commission has held that the through-charge rate is unreasonable because it exceeds all the rates of the intermediate points.

We would question that as an overpayment.

This bill that changes the word to "overcharge" won't let us do that. We would have to sue or appear before the Interstate Commerce Commission to have it declared unreasonable, though we know from past experience and their decisions that that is the answer that they always give in that type of situation.

The CHAIRMAN. Is that because the definition of overcharge under present law is different from the definition of overpayment?

Mr. FISHER. Yes, sir.

The CHAIRMAN. In other words, if that change is brought about, then you think it would be necessary to redefine the word "overcharge"?

Mr. FISHER. The Transportation Act now authorizes us to deduct overpayments after they have been made. You will change that to say that we will deduct overcharges. And it is two different things.

Let's say the tariff is a dollar, and they charge us $1.10. That is obviously an overcharge. The overpayment would be in the case of an unreasonable rate where, as I told you, the total of intermediate rates between two points is less than the through rate.

The CHAIRMAN. I am glad to get that distinction, because I thought probably that "overcharge" meant charging more than the rate should have been or more than provided and "overpayment" was where you made a mistake and just paid more than you should.

Mr. FISHER. The overpayment includes overcharge, but overcharge does not necessarily include overpayment.

The CHAIRMAN. I have no further questions.

Mr. FISHER. However, the one distinction that I do want to make on those words is that in the case of what we would then regard as an overpayment we could not collect by deduction offset. We have to go before the Interstate Commerce Commission or the courts.

Mr. O'HARA. It would make a multiplicity of suits for you.

Mr. FISHER. Yes, sir. I think it would add a tremendous burden of litigation.

The CHAIRMAN. Have you anything further, Mr. Wolverton?

Mr. WOLVERTON. Just 1 question or 2 in connection with what you have already stated.

Is it your opinion that there would be instances where "overpayment" would be a proper word to use in the legislation and in other instances "overcharge"? Or should it be changed generally?

Mr. FISHER. We want to leave it as it is. We do not want the change.

You have a section in all of these bills that would just amend the Transportation Act of 1940. In effect, you change the word "overpayment" to the word "overcharge." Obviously there is a difference or nobody would be seeking the change. We just don't want it changed. We want to leave it as it is.

Mr. WOLVERTON. Do you think it is necessary to have clarification of the definition?

Mr. FISHER. I don't think it is necessary if we leave the law as it is. Then we have no problem. I don't see any point in changing the definition.

Mr. WOLVERTON. Probably I got confused. It seemed that the chairman indicated that there was some confusion with your statement with respect to overpayment and overcharge.

Mr. FISHER. I might have very well confused you in trying to explain it, but we have no practical problem in the office, and I don't believe the carriers have with us as to the distinction.

Mr. WOLVERTON. That is all.

The CHAIRMAN. Mr. O'Hara.

Mr. O'HARA. If the change was made as suggested in this legislation, you would either have to bring suit or the Government would be out a lot of money. Is that not about the situation?

Mr. FISHER. That is exactly it.

Mr. O'HARA. There must be a certain reason for it.

Mr. FISHER. We bring some suits now, of course, when the carrier and we cannot agree. But as it is at least we can negotiate and discuss these things, and generally come to some solution.

Mr. O'HARA. Over the years I have heard a lot of criticism, Mr. Fisher, of two things. One, allegations that the railroads have been really gouging the Government with a lot of overcharges; and, two, that the General Accounting Office is slower than molasses in January in ever getting their work done.

I will admit there is maybe a little justification during wartime, but what about now? What is your situation now? How current are you?

Mr. FISHER. I am glad you mentioned that because I think these bills have all been brought about by the situation that was created during the war period, and I think it is safe to say that we estimated at our present rate of audits and our present personnel, a number of years ago we would be about 12 years behind all the time in those.

We have expedited our audit, streamlined it, worked out new procedures with the carriers on many things, and got through in pretty good fashion, but at the suggestion or request of a committee of Con-

gress, we were more or less asked to reaudit those war accounts so that we would be going back 8 or 10 years and going over those accounts again and finding what we call overpayments and charging the carriers.

It is a very unhealthy and undesirable situation.

That is, for all practical purposes, almost completed. So we won't have the problem again unless, of course, we have another war coming along.

Mr. O'Hara. I appreciate that.

Mr. Fisher. We are now auditing accounts of March 1957, which is 13 months.

Mr. O'Hara. As Mr. Flynt suggested, I do not know of any contract arrangement where you have a limitation much under 6 years. And suggested here is 2 years, and, of course, it is quite amazing to me that the private shipper only has 2 years. But, of course, he is in a little bit different situation than the Government is. For example, is the Government's custom when these bills come in to pay, or to audit and then pay?

Mr. Fisher. The law requires that they be paid first and audited afterward.

Mr. O'Hara. So you go ahead and pay on the bill whether the bill is right or wrong.

Mr. Fisher. That is right.

Mr. O'Hara. Then you have to go back and go over it and recover the money.

Mr. Fisher. That is right, yes, sir.

Mr. O'Hara. If it is an overcharge.

Is there any reason why you feel that 3 years will give the Government ample time to go through the negotiations and, if necessary, a suit to recover the overcharge or overpayment. Do you think that gives you ample time?

Mr. Fisher. We think we can live with that.

As we have said, in all of our reports, we prefer 6 years because we do a lot of negotiating with these carriers.

Mr. O'Hara. It is a practical matter.

Mr. Fisher. As a practical matter, 6 years is much better for us.

If 3 years is what is adopted, we will try to do our best.

Mr. O'Hara. Of course, you cannot speak for the carriers. I mean they know much more quickly than the Government would ordinarily whether they have undercharged, do they not?

Mr. Fisher. Yes.

Mr. O'Hara. Is there any reason why they should not be able to negotiate and recover within 3 years under the same situation? Or would they have to bring suit? Would they have the same right to negotiate that you have?

Mr. Fisher. Mr. O'Hara, I would not like to speak on that. As far as I know, the 2-year limitation has always been the law.

They don't have all the problems that the Government does.

Mr. O'Hara. I understood that they had 10 years to recover.

Mr. Fisher. No, no.

Mr. O'Hara. I am speaking of the railroads.

Mr. Fisher. Railroads have 10 years to recover against us.

Mr. O'Hara. I am speaking now of the railroads when I speak of the carriers. I apologize. I am speaking of the railroads.

Mr. FISHER. They ought to have the same time that we have, of course.

Mr. O'HARA. Three years should be sufficient for them to recover for an undercharge to the Government. Is that not correct?

Mr. FISHER. I assume that they feel that way, because these bills even require them to sue within 2 years.

Mr. O'HARA. I mean I think it should be across the board.

Mr. FISHER. I think the rules ought to work both ways; yes, sir.

Mr. WOLVERTON. Mr. O'Hara, will you explain to me what you mean about that observation of 10 years?

Mr. O'HARA. It is my understanding, under the present laws, the railroads have 10 years in which to recover for an undercharge made by them.

Mr. FISHER. But they can only sue in the court for 6 years.

Mr. O'HARA. They can only sue for 6 years?

Mr. FISHER. Yes.

Mr. O'HARA. What do you mean by that?

Mr. FISHER. We run into that situation all the time. Let me give you an example of what happens in our Office, one of the reasons why we don't like our 10-year statute.

Let's assume that a group of employees come in. Fire fighters. I think there are a lot of cases pending now. And they have decided they should have overtime pay for years back, which the General Accounting Office does not agree with.

They can sue in the Court of Claims, and, if the Court of Claims gives them a judgment, it can only give them a judgment for the last 6 years, because there is a 6-year statute.

But then they come to us and we give them 4 more years because they have 10 years before us. That is very inconsistent.

Mr. O'HARA. It is amazing.

Mr. FISHER. If they don't sue in the Court of Claims within 6 years, they can still come to the General Accounting Office within a period of 10 years.

Mr. O'HARA. Would that apply to a carrier?

Mr. FISHER. Yes, sir. So, we are in the position of being able to pay a claim which could not be enforced in the courts.

Mr. O'HARA. I think there has been an area of criticism on the part of the Government's slowness in getting these bills audited and that sort of thing. There has probably been something to it that some of these overcharges have been a little high on the part of the carriers, but I do think, in treating this subject, it ought to be an equitable situation where the statute of limitations applies both ways. Let me ask you this: When would the statute begin to run? From the time of the service or the time of billing?

Mr. FISHER. Under these bills it is—at least, it is all prospective—generally, from the date of payment. Or, if carriers paid and we audited the account and make a deduction, then, when we deduct, the statute of limitations would start from that time.

Mr. O'HARA. That would work the same way with the carrier? I mean the 3-year statute from the time of payment would apply to the carrier?

Mr. FISHER. He would have 3 years to file a claim for an additional amount.

Mr. O'Hara. For an additional amount from the time the Government pays?

Mr. Fisher. That is right.

Mr. O'Hara. That is all, Mr. Chairman.

The Chairman. Is it true, generally, that the Government pays to the railroads rather substantial payments, or overcharges?

Mr. Fisher. We have collected back an awful lot of money. Do you have a percentage figure, Mr. McDonnell?

Mr. McDonnell. We collected half a billion dollars out of the wartime reaudit that we made, and it runs now, on the current payments, somewhere about $30 million to $35 million a year. I don't limit that to railroads, Mr. Chairman, although you used that word. I just say carriers, generally.

The Chairman. You mean common carriers or contract carriers?

Mr. McDonnell. Common carriers, generally speaking.

The Chairman. Are contract carriers included in that group, too?

Mr. McDonnell. In some cases, yes sir; depending on the services they furnish and how they are paid for.

The Chairman. I know you did have a rather substantial contract-carrier haul.

Mr. McDonnell. That is right.

The Chairman. I do not know about the last few years, but I know during the war you did, particularly with reference to explosives.

Mr. McDonnell. I would say, with respect to those carriers subject to the Interstate Commerce Act and the Civil Aeronautics Act, just as section 322 says, that, in connection with their billings, we recover somewhere between $30 million to $35 million a year pretty consistently.

The Chairman. We are, apparently, reaching a meeting of the minds at least, or a degree thereof.

Mr. O'Hara. Area of understanding.

The Chairman. Maybe that would be right, on the 3-year proposition. I do not know how long this will last; maybe not any longer until we get to the next witness. However, getting back to this changing the word "overpayment" to "overcharge" as defined by the Interstate Commerce Act, what you are doing is calling to the attention of the committee the fact that, should that change be made as the bill would now provide and as the Interstate Commerce Act recommends, it should be made to conform to include the Civil Aeronautics Board.

Mr. Fisher. We are suggesting that; yes, sir.

The Chairman. In view of the provision of law, I think you have a good point there. The Interstate Commerce Commission says in its report, and I think it would be well to read this:

> In addition, the bill would change the word "overpayment" in section 322 to mean "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges, established pursuant to section 22 of the Interstate Commerce Act." In section 16 (3) (g) of the Interstate Commerce Act, and in the corresponding sections of the other parts of the Act, the term "overcharges" is defined as meaning "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission," except that the word "transportation" is omitted in section 406a (5) of part IV. This substitution would make it clear that, while the Government may deduct from current accounts with a carrier amounts claimed to have been paid in excess of the applicable tariff rate, it may not deduct amounts resulting

from the charging of rates alleged by the Government to be unreasonable or unduly prejudicial or otherwise unlawful, although applicable because specified in the tariffs.

Will you try to explain to me just what the latter part of that means?

Mr. FISHER. They have a tariff. If they charge more than that tariff calls for that is, of course, an overcharge.

The CHAIRMAN. Yes.

Mr. FISHER. The other is where the rates would be unreasonable. Establishing a tariff does not necessarily make the rate reasonable. It just gives something to operate on. It may be unreasonable and, yet, the charge is not in excess of the tariff. So we have no means of collecting it except to go to the Commission and to file a complaint that the tariff rate is unreasonable.

The CHAIRMAN. Perhaps we will have some further clarification or explanation as we go along.

* * * it may not deduct amounts resulting from the charging of rates alleged by the Government to be unreasonable or unduly prejudicial or otherwise unlawful * * *.

Why would anyone want to prohibit the Government from collecting rates that are unreasonable or unlawful?

Mr. FISHER. Of course, they might not agree with us that they are. But in the cases in which we allege unreasonableness or unlawfulness we use decisions of the courts or the Interstate Commerce Commission in comparable situations as guidelines.

The CHAIRMAN. In other words, what this means then, if I understand it correctly, is under the present situation you just make a decision as to what they are, and you determine they are unlawful, and then when you make that determination you deduct that amount from the payment to the carrier.

Mr. FISHER. That is right.

The CHAIRMAN. The carriers do not like that procedure and they say, "If you allege them to be unlawful you may be wrong, and, therefore, you ought to go into court and prove it"

Mr. FISHER. Yes.

As it is, we offset it, and if they don't agree they have to go to court.

The CHAIRMAN. You mean as it is today, they have to go into court, and if this change would be made you would have to go into court. Is that it?

Mr. FISHER. Yes, sir.

The CHAIRMAN. Or would you go to the Commission?

Mr. FISHER. This would authorize us to do either one. But I think we would go to the court. In many cases at least we would.

The ICC Act does not authorize an award of reparations to motor carriers. It does to the railroads. It does not to the motor carriers. We might have to go into court on those.

On the regular railroad carriers we could go into the ICC, but the distinction, I think, is this: In these cases we have some basis for our determination that this rate is unreasonable; we are following ICC rulings or court rulings, so that there is substantial ground for it. If this is changed we have to take all of those cases into court.

We are not sued every time that we declare or think one of these things is unreasonable. The carrier many times promptly pays without further argument.

The CHAIRMAN. Why, Mr. Fisher, should the General Accounting Office—I am asking this very pointed question for information—be given the authority to determine whether a rate is lawful or unlawful when the Interstate Commerce Commission is set up for that purpose, to make such determinations with reference to everybody else?

Mr. FISHER. We don't make the final determination, of course, because the carrier can still go to the Interstate Commerce Commission.

But one of the things that brought this about, of course, is the fact that these carriers are entitled to charge whatever tariffs they file, and be paid without any audit, get their money in advance, and let us look at it afterward. We don't get a chance to audit it first or to go to the Interstate Commerce Commission the day they tell us what the rate is going to be between two points. We are forced to pay them first and look at it afterward.

The CHAIRMAN. Are not those rates published and you are entitled to see what they are just like every other shipper?

Mr. O'HARA. Tariffs are often one-sided?

Mr. FISHER. We are not the shipper. These shipments are being made all over the country by various departments and we don't see them or even know about them until the paid bills come to us for audit.

Mr. O'HARA. The carrier just goes in oftentimes and files a tariff. The Commission has not determined it because there has not been a dispute about it.

Mr. FISHER. That is the general practice.

Mr. O'HARA. And, of course, you have a right to have a hearing on the reasonableness of that tariff; have you not?

Mr. FISHER. I just think it is going to make a tremendous burden.

The CHAIRMAN. Yes; I think it would, too. It is very important. I know you have a right to have a hearing on the reasonableness of it, but what I am asking is why should you be given the authority to determine whether it is reasonable or not when the Interstate Commerce Commission is set up for that purpose.

Mr. FISHER. I don't think in the final analysis that we do make that determination. If, in our own judgment in auditing these bills, we think that that is unreasonable, we call it to the attention of the carriers. We don't automatically make a deduction. We send them a notice and point out why, and many times they agree with us, so that there is no conflict. But in each case if this word is changed we will have to go into court, and not only on a bill of lading that shows up today on the thing but any bill of lading that might come in the next week, or last week.

It seems to me there would just be a multiplicity of filings on the same subject.

The CHAIRMAN. Mr. Flynt, do you have anything to say in defense of this provision?

Mr. FLYNT. I wanted to mention this particular thing:

Is it not true that sometimes in the past the General Accounting Office has taken into consideration in determining the alleged unreasonableness of a rate that one mode of transportation has one rate, another mode has another, and if the higher mode carried a certain shipment the General Accounting Office has taken the position that

the lower rate filed by a competing mode is the only reasonable rate, and anything higher than that is not reasonable?

Mr. FISHER. Not to my knowledge.

By mode are you distinguishing between a motortruck or rail?

Mr. FLYNT. A motor carrier or a rail carrier.

Mr. FISHER. No, not to my knowledge.

Mr. FLYNT. You are, of course, an agency of the Government. The Government, of course, is advised any time a tariff is filed, and has the right to dispute the reasonableness of that tariff. Is that correct?

Mr. FISHER. The Interstate Commerce Commission, of course, has, I presume.

Mr. FLYNT. That is right.

The Department of Defense, I understand, often comes in and files their objections.

Mr. FISHER. They have that right.

Of course, they never have the problem until the shipment is made and unless there is a multiplicity of shipments they might not go in on one shipment and raise any question.

Take the shipper for the Department of the Army, for example, out West somewhere. He might not be concerned with his one little shipment, and another one up in Washington might not be concerned. When they get to us we see them coming from all over the country. It gets to be a major problem then.

Mr. FLYNT. Mr. Fisher, do you think that the General Accounting Office should have the right to be a rate-setting body and a court of appeals from that rate-setting body?

Mr. FISHER. Neither one.

Mr. FLYNT. I mean if you seek to determine the reasonableness or unreasonableness of a rate that has been established by a rate-setting body, a regulatory commission——

Mr. FISHER. Of course, these tariff rates aren't established by the Interstate Commerce Commission. They are established by the carriers and filed with the Interstate Commerce Commission.

Mr. FLYNT. And if there is any question as to their reasonableness there is a statutory period during which objections can be filed.

Mr. FISHER. Yes, sir.

Mr. FLYNT. And if nobody files an objection within a given period, it becomes fixed.

Mr. FISHER. Yes, sir.

Mr. FLYNT. However, it is always subject to the test of reasonableness from the time it is filed.

Mr. FISHER. That is right. I think it can probably be attacked at any time. I don't think there is any statute of limitations on when you might challenge it. There may be a statute of limitations on how long you could go back on your shipments, but we could make a shipment tomorrow and challenge the reasonableness of a rate even though we had some shipments 10 years ago and didn't.

Mr. FLYNT. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Hale, did you have any questions?

Mr. HALE. No, I do not.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. No questions.

The CHAIRMAN. Thank you very much, Mr. Fisher. I am sorry we have kept you longer than you anticipated. I think, in view of this, however, it will shorten the discussion on this subject.

We appreciate the contributions that both you and Mr. McDonnell have made.

Mr. FISHER. We are glad to be here.

Mr. O'HARA. Mr. Chairman, if we should arrive at what has been suggested here, what we have talked about, I wonder if we are going to have to draw up some different language in this legislation.

Mr. FLYNT. I think we would have to draw up a clean bill.

Mr. FISHER. We would be very glad to cooperate in any way we could if there is any change to be made in the language.

The CHAIRMAN. I do not think it would be the better part of wisdom to go into executive session right now.

The next witness will be Mr. C. E. Walker, Columbus, Ga.

Mr. McDonnell, did you have anything else you wanted to say? I didn't want to cut you off.

Mr. FLYNT. Are we to understand that the appearance of Mr. Fisher constitutes a joint appearance for both you and Mr. McDonnell?

Mr. FISHER. Yes, sir.

The CHAIRMAN. Mr. Walker, will you identify yourself for the record, and proceed?

STATEMENT OF C. E. WALKER, COLUMBUS, GA.

Mr. WALKER. My name is C. E. Walker, and I am an attorney residing at 2027 40th Street in Columbus, Ga.

I am a member of the Georgia Bar Association and the American Bar Association, a member and a past president of the Southern Traffic League, and am a member of the National Industrial Traffic League. I also represent motor carriers.

If I might be permitted to get off my statement just a moment, I would like to preface my remarks.

Mr. FLYNT. Mr. Walker, would you like your statement to be included in the record at this point in its entirety?

Mr. WALKER. I would like to finish reading it, if I may.

Mr. FLYNT. You can still do that. Do you want to digress from it? Do you want your statement to appear as written in the record?

Mr. WALKER. Yes, sir.

The CHAIRMAN. You may have your statement included in the record, Mr. Walker, in full and then give such explanations of it as you desire.

Mr. WALKER. I wanted to read the statement in full, but I wanted to preface the remarks here with just a few words not in the statement.

The CHAIRMAN. Very well.

How much time are you going to take on this?

Mr. WALKER. Just 2 minutes or so.

The CHAIRMAN. You mean in addition to your 8-page statement?

Mr. WALKER. Yes, sir.

The CHAIRMAN. We kept the other people on a long time in an effort to try to shorten this hearing. We have several other witnesses, and we

would like to get through them this morning. I think you better proceed. I think we will make better time by you going ahead.

Mr. WALKER. It was my privilege to be in attendance at meetings of the National Industrial Traffic League and the Southern Traffic League several years ago when resolutions were adopted asking Congress and the Interstate Commerce Commission not to press collection of the so-called undercharges against the railroads on wartime traffic, which undercharge claims were covered by the Interstate Commerce Commission's dockets Nos. 29572 and 29875.

I appear here today in support of proposed legislation as covered by H. R. 8742 and H. R. 8743, which would fix a statute of limitation within which the United States Government can prosecute claims for overcharges against common carriers.

Particularly am I interested in the fact that legislation cannot be made retroactive, and to point out to this honorable committee that unjust discrimination has been practiced under the present law as I will analyze here.

Following World War II the Government, through its General Accounting Office, compiled overcharge claims which totaled something like $2 billion, more or less, against the railroads of the country.

These alleged overcharges were on freight shipped by or for the United States Government and the various Government agencies, predominantly during the World War II period.

The matter was submitted to the Interstate Commerce Commission for adjudication as to what rates were the lawfully applicable rates since the Government was contending certain rates were the lawfully applicable rates, and the railroads claimed different rates were the lawful rates.

The Commission assigned its docket No. 29572 to cover the whole general question, which also embraced its dockets Nos. 29622, 29735, 29761, 29875 and a number of other dockets.

The result was that the Commission found the rates charged and collected by the railroads were not unlawful or unreasonable and the Government was not allowed to recover this approximately $2 billion allegedly owed to the Government in overcharges.

Irrespective of this holding by the Interstate Commerce Commission, which is also a governmental agency, that prevented the Government recovering those claims from the railroads, the General Accounting Office has continued its prosecution of such alleged overcharge claims covering traffic transported during the same period against the motor common carriers.

Against these motor carriers or trucking lines, as they are commonly called, the General Accounting Office has pursued a different practice. It has not submitted its alleged overcharges to the Interstate Commerce Commission for a determination of the lawfulness of the claimed rates, but sues the carrier direct in Federal district courts.

If the General Accounting Office receives an adverse verdict, it appeals and the small-motor trucklines are unable financially to take these matters through the courts. As a matter of fact, they are not financially able to put up a reasonable defense in Federal district courts.

In many instances present owners were not the owners during World War II when the transportation was paid for and the present

owners have no knowledge or records of the various shipments on which overcharges are now alleged.

One motor carrier, as an example, is Watkins Motor Lines of Thomasville, Ga.

The General Accounting Office has threatened suit against Watkins Motor Lines for an amount of something like $23,000, $18,000 of which is principal and about $6,000 is interest, and all of this covers rates and charges on shipments transported by Watkins Motor Lines more than 10 years ago, during the World War II period.

In those days whatever rate that was agreed to between the Government agency and the carrier as being a reasonable rate for the particular service was the rate charged by the carrrier and paid by the Government. At times the Government needed particular service that no rate was provided for in tariffs on file with the Commission, and in such cases the General Accounting Office now demands in these overcharge claims that the carrier allow the General Accounting Office to now fix a rate that it believes would have been more reasonable than agreed to at the time more than 10 years ago.

The General Accounting Office cannot fix rates. Only the Interstate Commerce Commission is authorized by law to fix or prescribe freight rates.

Of course, the defendant carrier, Watkins Motor Lines, does not now have complete tariffs and records covering its World War II operations, and does not have its key employees of that time, and is at a great disadvantage in trying to defend its position. In talking with lawyers in Atlanta, Ga., I found other similar cases.

One of the primary objectives of my testimony here is to recommend to this honorable committee that, in view of the finding and order of the Interstate Commerce Commission with respect to the approximately $2 billion in alleged overcharges claimed by the General Accounting Office against the railroads, in its docket 29572 and related cases, and the fact that the Commission disallowed said $2 billion, that this honorable committee incorporate in its report on H. R. 8742 and H. R. 8743 (S. 377) a finding to the effect that it would be inconsistent with the sense of the Congress to prosecute now against these smaller motor trucklines, claims covering Government shipments that were transported more than 10 years ago.

Surely what is salt for the gander is also salt for the goose.

As grounds for this recommendation, I should like to refer this honorable committee to a statement by the President in his veto of S. 906 which allowed the Government 6 years to bring actions of this nature. The President said on September 2, 1954:

> I see no reason why the Government should not be subject to the same limitations on retroactive review of its freight charges as the commercial shipper * * * I recommend that such legislation be enacted at the next session of the Congress.

In connection with Senate bill S. 377, which was given Senate approval, the Senate committee report stated in part:

> In the interest of fairness to all concerned, the committee believes that a 2-year statute of limitations, now applicable to commercial shippers, should be applied to * * * the Government * * *.
>
> Further, the Supreme Court in a recent decision "assumed without deciding" that the Government is barred by section 16 (3) of part I of the Interstate Commerce Act from filing a complaint beyond the 2-year period.

Irrespective of the attitude of the President of the United States, the Senate of the United States, and the assumption of the Supreme Court that the Government is barred by section 16 (3), the General Accounting Office apparently does not go along, but assumes that it should go right ahead with prosecuting claims against small-motor carriers, on freight shipments that were transported for the Government more than 10 years ago.

Therefore, my recommendation to this honorable committee of the House of Representatives is that, in fairness and equal justice to all and in line with what the Senate and the Supreme Court have said, and the dismissal of the claims against the railroads, that your honorable committee write into its report a statement to the effect that it is the sense of the Congress that the Government should not proceed further with the prosecution of actions against common carriers on chrages for transportation that occurred more than 10 years ago.

That concludes my statement.

Mr. FLYNT. (presiding). Mr. Walker, did you want to add anything to that?

Mr. WALKER. I merely wanted to comment that the Interstate Commerce Commission, of course, is the only body authorized by the Congress to determine whether or not a rate is a lawfully applicable rate via the carrier over the route which the shipment moves from and to points to which a shipment moves.

Mr. FLYNT. Mr. Wolverton.

Mr. WOLVERTON. Mr. Walker, I have noticed that in your statement, in more than one instance, in calling attention to what you consider an inequity with respect to motor carriers, you request this committee to—

> incorporate in its report on H. R. 8742 and H. R. 8743 (S. 377) a finding to the effect that it would be inconsistent with the sense of the Congress to prosecute now against these smaller motor trucklines claims covering Government shipments that were transported more than 10 years ago.

Are you of the opinion that the mere writing into a report would have the effect that you wish it to have?

Mr. WALKER. No, sir.

Mr. WOLVERTON. I wonder if the President made the statement that he did, and the Supreme Court made the statement that it did, and the Senate has made the statement in its report that it has made, that, notwithstanding those suggestions, the General Accounting Office has continued to carry on this practice, why you are so optimistic and are of the opinion that it would be sufficient if we incorporated this in the report.

Mr. WALKER. I am not too optimistic, but that recommendation was incorporated in my statement because of the last paragraph in the bill, which is shown as section 10, on page 4, where the bill states:

> The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act.

And that might be construed to encourage the continued prosecution of claims that cover shipments moving 10 years ago.

Incidentally, I know of claims that have been filed by the General Accounting Office in 1957 on shipments that moved 10 years ago.

Mr. WOLVERTON. Personally, without binding myself too thoroughly, it would seem to me that there is some merit in what you have said. This idea of going back 10 years and requiring a motor company, which you so well pointed out in some instances are vary small in character, to defend an action when it may be at a time during which it was under a different management, when there were different employees than at the present time, and all those features which you have so well pointed out in your statement, it would seem to me that whatever relief you are entitled to, if the committee so decided, should be made plainer than just a mere interpretation of some language that was used that may carry it out, or by a reference to it in the report.

I realize that if the language in the bill is indefinite, maybe the language in the report would be helpful in interpreting it to the court on future occasions, but I have always believed that where it is possible to do so it is better to write it into a statute and not depend just merely upon the court reading a report of the committee and using that as a means of interpreting what Congress meant.

We are all aware that the courts do that, and it is a proper thing for them to do, together with the arguments that are made in debate on the floor of the House and Senate, but, at the same time, when you can write it into a statute, if you have that desire, that is the place to do it, in my opinion.

Mr. WALKER. You noticed, sir, the last paragraph made a clear limitation in the bill.

Mr. WOLVERTON. Then is it your opinion that the language of the bill would accomplish what you have suggested, and that the reference to it in the report would merely be an interpretation of the bill?

Mr. WALKER. I think so, sir.

Mr. WOLVERTON. That is all.

Mr. FLYNT. Mr. Hale?

Mr. HALE. I take it, Mr. Walker, you are the attorney for the Watkins Motor Lines.

Mr. WALKER. I am today.

How I got into the Watkins Motor Lines was that I am an attorney for another group of shippers and learned about the situation and came into contact with the claims that were being filed, and I was employed to see if other carriers were in the same situation. I went to Atlanta and talked with lawyers there who represent motor carriers in the motor carrier industry to determine if that was the case, and I found it was, and I went back and made a report, and Mr. Watkins asked me if I would come and testify as to my opinion, and what I am testifying to is my recommendations to him, and my recommendations here are not necessarily the opinion of anyone else.

Mr. HALE. However, your own experiences as an attorney lead you to believe that the prosecution of these claims at so late a date involved a substantial injustice to carriers. Is that correct?

Mr. WALKER. Yes, sir, especially due to the fact that one mode—the railroad industry—has been, you might say, forgiven for the rates they charge in the same situation exactly. The same traffic during the same period of time was found to be not unlawful and not unreasonable by the Interstate Commerce Commission, and I was a party to those resolutions that were being recommended by the Southern

Traffic League and National Traffic League and other shipper organizations.

I notice there are in this Commission report a list of 65 or more shipper organizations that intervened before the Commission in support of the carriers in connection with this traffic with the railroads.

Mr. HALE. This is one case in which you think the railroads have been better treated than the trucks?

Mr. WALKER. That is right. What is fair for the goose is fair for the gander.

Mr. WOLVERTON. Will you yield, Mr. Hale?

Mr. HALE. I am all through.

Mr. WOLVERTON. In the event that the situation arises which you have pointed out in your statement, that there was any relief, so to speak, granted for any charge made against the motor company, would there be any opportunity for the motor carrier to go back to the shipper?

Mr. WALKER. No, sir; that couldn't be done.

You mean to the Government.

Mr. WOLVERTON. No. I meant would the motor carrier be able to go back and make any recovery against the shipper.

Mr. WALKER. The shipper in this case was the Government.

Mr. WOLVERTON. Do all of these cases refer just to Government shipments?

Mr. WALKER. That is right.

Mr. WOLVERTON. I see. Therefore, your objection was relating entirely to Government shipments.

Mr. WALKER. I hope that my statement was plain that there may be a rate between point A and point B published with the Interstate Commerce Commission which would apply to one motor carrier and wouldn't apply to the other motor carrier operating between the same points, and only the Commission can decide which one of those rates would be the lawful rate other than the published rate.

Mr. WOLVERTON. Your fundamental objection is the length of time during which there can be a question raised?

Mr. WALKER. That is right. I don't think anybody that I represent would have any objection to the 3-year period.

Mr. FLYNT. Mr. Younger.

Mr. YOUNGER. In your statement you make this remark:

The matter was submitted to the Interstate Commerce Commission for adjudication.

That applies to the question of lawful or unlawful rates on railroads?

Mr. WALKER. That is right.

Mr. YOUNGER. Who submitted it?

Mr. WALKER. That was brought by the Federal Government. And I see here on the record Stanley Barnes and James E. Kilday as the counsel, which I understand was the Assistant Attorney General of the United States.

Mr. YOUNGER. In that same case why did not the motor carriers see that their situation was adjudicated at the same time?

Mr. WALKER. My understanding is the motor carriers thought whatever action the Government took with respect to the railroads would apply to them, too, or that if it did not, being the ruling that the

Commission made, it certainly would apply to them, and it would have applied to them had the GAO brough the case against the motor carriers before the Interstate Commerce Commission like I tried to get them to do when I first undertook to represent Watkins Motor Lines.

I believe the Commission would have held for the motor carriers exactly as they did for the railroads, but the GAO refused to do that. They want to fix those rates themselves as they see fit.

Mr. YOUNGER. It looks to me as though the motor carriers could have been brought in before the ICC just the same as anybody could.

Mr. WALKER. I don't think.

Mr. WOLVERTON. In other words, why could not they have intervened?

Mr. YOUNGER. The amazing thing in all of this transportation problem is that in every question that comes up the railroads and the motortrucks and the airlines are all treated differently. Yet they are all competing lines.

Knowing that situation, why did not the motor carriers go in at the same time when this question was submitted and insist on being considered? That is the thing that amazes me in all of these cases where there is so much controversy and so much time is consumed, since you are all in the same transportation business, yet we find in every one of the cases, in agricultural exemptions, for instance, the question of the private carriers against the regulated carriers there is different treatment all the way down the line.

It is just amazing to me that in all of this law there is that constant difference, taking the time of the committee and the time of everybody, including the carriers and the railroads, when there ought to be uniformity all the time in the transportation system.

How we are going to achieve it I do not know, but it is amazing to me that that continues.

Mr. WOLVERTON. Speaking of amazement, I have been a member here for 32 years, and I constantly am amazed. It seems to me that each year we are always dealing with something that we think is going to correct everything and make everything possible; and yet, each new year we have new problems.

Mr. YOUNGER. Applicable to that, I received a little card yesterday that said, "Please try and keep the confusion orderly."

I think we ought to send that card down to the ICC and the CAB and a few of them.

Mr. FLYNT. Thank you very much, Mr. Walker.

The next witness will be Mr. Edgar Watkins, representing the American Trucking Associations, Washington, D. C.

Mr. WOLVERTON. May I ask the preceding witness one more question?

Mr. FLYNT. Yes, sir.

Mr. WOLVERTON. Were you speaking for the trucking industry or were you speaking for only a portion of it?

Mr. WALKER. I am not representing the trucking industry. I am speaking only for the Watkins Motor Lines so far as trucklines are concerned.

Mr. WOLVERTON. There will be somebody, Mr. Chairman, who will speak for the trucking industry?

Mr. FLYNT. Mr. Edgar Watkins will be speaking for the American Trucking Associations.

STATEMENT OF EDGAR WATKINS, GENERAL COUNSEL, ACCOMPANIED BY JAMES F. FORT, ASSISTANT TO GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS, INC., AND NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.; AND BRYCE REA, JR., ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. WATKINS. Mr. Chairman and gentlemen, my name is Edgar Watkins, and I am an attorney with offices in the Munsey Building, Washington, D. C.

The CHAIRMAN. Do you want Mr. Fort's name to appear in the record with yours?

Mr. WATKINS. Yes. Mr. Fort, who is assistant general counsel of the American Trucking Associations, is with me. And Mr. Bryce Rea, Jr., is a partner of mine, and he is with me, too.

Mr. WOLVERTON. Who is the president of the American Trucking Associations?

Mr. WATKINS. The president of the American Trucking Associations today is Mr. Guy Rutland, Jr., of Georgia.

I am appearing for the American Trucking Associations, Inc., and for the National Motor Freight Traffic Association, Inc., I am general counsel of the latter group. The offices of both organizations are at 1424 16th Street NW., Washington, D. C.

As the committee knows, the American Trucking Associations, Inc., is the national trade association of the trucking industry representing all types of motor carriers of property. The National Motor Freight Traffic Association has as its members over 4,400 common motor carriers, and its purposes include publication of classifications of commodities for the transportation of property by motor vehicles.

The American Trucking Associations support H. R. 8742 and H. R. 8743 and S. 377, a similar bill which is also before this committee. S. 377 passed the Senate in August of last year. My testimony will be directed principally at sections 3, 4, and 9 of the pending bills which are the sections concerned with motor carrier operations.

Section 4 amends section 204a of part II of the Interstate Commerce Act, also known as the Motor Carrier Act, to make it plain that the 2-year period within which a shipper must sue for overcharges and with which a motor carrier must sue for undercharges are applicable to suits by or against the United States.

The principal difference between a private shipper and the United States in its capacity as a shipper is that section 322 of the Transportation Act of 1940 gives the General Accounting Office authority to deduct, in the words of that section, overpayments from amounts otherwise due the carrier. In other words, the United States, on post-audit of paid bills for transportation, can set off what the General Accounting Office deems to be overpayments on one movement against charges it owes carriers on other movements. In short, the United

States, unlike the private shipper, can resort to self-help to recover overcharges.

The amendments proposed, particularly section 3 of the bill changing section 204 of the Interstate Commerce Act, take account of but make no change in this right of the General Accounting Office under section 322 of the Transportation Act of 1940, but simply provides that the time the cause of action begins to accrue runs from either the date the United States pays charges billed, or from the date the General Accounting Office collects what it deems to be overcharges by deduction, whichever is later.

As a practical matter, the date of deduction is the more significant.

The only occasion a carrier would have to sue the United States for its charges before deduction would be where it had initially undercharged the Government by incorrectly computing its charges or by computing them on the basis of inapplicable rates lower than the applicable rates. The only occasion the Government would have to sue a carrier for overcharges would be where there were no amounts due the carrier for other movements against which deduction or setoff could be made.

Section 9 (1) of the bills amends section 322 of the Transportation Act to make clear that the General Accounting Office can deduct only for overcharges as they are defined in section 16 and section 204a (5) of the Interstate Commerce Act. That is "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission."

I was quoting there from the Interstate Commerce Act.

We think this is the limit of the General Accounting Office's authority under the present language of the section authorizing deductions of overpayments.

In our view "overcharge" and "overpayment" are correlative terms. What is an overcharge by a carrier is an overpayment by a shipper.

Nevertheless the General Accounting Office construes section 322 to authorize it to deduct charges based on admittedly applicable rates whenever it thinks those rates unreasonable.

I might tell the committee that there are cases pending in the courts today to test that power of the General Accounting Office.

No private shipper can do this. The Interstate Commerce Commission has exclusive authority to decide whether rates are unreasonable. Applicable rates filed with the Interstate Commerce Commission must be observed by carrier and shipper alike until the Commission determines that they are unreasonable and prescribes other rates in their stead.

The proposed change in section 322 will make it clear that the Government is bound by this rule and that the General Accounting Office cannot usurp the exclusive function of the Interstate Commerce Commission. It will thus help carry out the President's program to subject the Government "to the same limitations on retroactive review of its freight charges as the commercial shipper."

Section 9 (2) also amends section 322 of the Transportation Act of 1940 to require the General Accounting Office to make deductions within 3 years. At the present time there is no limitation.

We think it only fair that there be some time limitation. Private shippers now have 2 years to audit their bills and bring suit. In

view of the volume of Government traffic, a 2-year limitation on deductions might be too short to permit full consideration by the General Accounting Office and discussion between it and the carrier before deductions were made. Such consideration and discussion is important to the carriers because it often results in agreement with the General Accounting Office either that the charges collected were in fact proper or that there was in fact an overcharge, in which latter case the carrier pays the claim voluntarily.

Even where agreement is not reached, carriers usually prefer to pay claims under protest rather than let the General Accounting Office make deductions because deductions confuse and complicate their accounting systems.

We therefore support the imposition of a 3-year period of limitations on the General Accounting Office as contained in section 9 of the pending bills.

A similar bill, S. 377, was amended when passed by the Senate to provide that the 3-year limitation should "not include any time of war." We have no quarrel with this amendment.

Another Senate amendment made it clear that every claim for transportation charges cognizable by the General Accounting Office shall be forever barred unless presented to such Office by the carriers within 3 years from the date the Government paid such charges.

We can see nothing wrong with this as long as the limitation of 3 years applies both to the United States and the carriers.

In connection with that I want to state that some people have stated that there is a possibility that that might be construed so as to require the filing of a claim with the Government before suit could be brought. I think that should be clarified so that that interpretation is not possible.

I also might state here that I disagree with the Honorable General Counsel of the General Accounting Office, with his interpretation of the Western Pacific case. I think he overstated the Government's position completely.

That case applied to applicability of rates rather than to reasonableness of rates.

In this connection, if I may go back to section 4 of the bills for a moment, it occurs to us that it might be advisable to lengthen the time within which suit may be brought by either carrier or the United States from 2 years to 3 years—there I am dealing only with Government traffic—thus making it the same as the time within which the General Accounting Office may make deductions.

If the GAO is required to sue within 2 years they would not wait 3 years to make a deduction for fear that funds might not be available after 2 years and the time for suit would have been barred. This may well compel the General Accounting Office to make deductions within 2 years. If this, in turn, were to cause it to make deduction without taking the time necessary to give the matter full consideration and to discuss it with the carriers and to give them an opportunity to pay voluntarily or under protest, both the General Accounting Office and the carriers would be put to unnecessary trouble and expense. To guard against this we would not object to making the period of limitations for suit by or against the United States 3 years, thus enabling the General Accounting Office to take ad-

vantage of the full 3 years within which it can make deduction without thereby endangering the Governments cause of action. In the event that language on this point has not already been submitted by the General Accounting Office, we will be glad to work with the committee staff and the GAO to arrive at acceptable language.

In view of the above reasons, we respectfully request that the pending legislation be favorably acted upon by the committee and the House of Representatives.

I have seen, Mr. Chairman, the presentation that the railroads will make in this case, and, while we do not discover all the dangers in the present wording which they have discovered and will discuss, we are in sympathy with every attempt to clarify the law, and to this end we join in urging the clarification as recommended in the rail presentation.

Let me say in conclusion that we support the idea of a proper limitation on acts growing out of movement of Government traffic. We think much uncertainty will be removed by clarifying the meaning of overpayment by reference to the already used definition.

In that instance we will accept the idea of the General Accounting Office that the definition be included in the act rather than referred to in the Interstate Commerce Act as suggested by their counsel Mr. Fisher.

We support the idea that the time for suit on Government claims be the same as the time for deductions, and we see some benefits to both the Government and the carriers in making it 3 years.

I certainly appreciate the opportunity of discussing this with you.

I would like to refer a moment to Mr. Younger's question about the Government reparation cases.

In the first place, the Government reparation cases were brought against certain rail rates, and the complaint was brought by the various Government agencies. As long as there were no motor-carrier rates involved in that complaint case it would have been impossible for the motor carriers to have intervened in that case and tried to bring in issue any motor-carrier rates.

I might say this different treatment points up the difference in the treatment that the Government agencies give the railroads as compared to the motor carriers. Instead of bringing complaint against the motor carriers where they want damages for the exaction of what they contend is an unreasonable rate, they simply deduct it from the motor carrier without bothering to proceed against the Interstate Commerce Commission.

I have one matter before me which clearly illustrates what I am talking about when I am talking about these deductions. Here is a series of correspondence between the General Accounting Office and a carrier, and the net of it is this, that the General Accounting Office said that because of a certain case, which they cite, the charges of the carrier were prima facie unreasonable.

The carrier, on the other hand, cited another case and said that because of the decision of the Commission in that case their rates were reasonable, but that did not stop the General Accounting Office from making a deduction. That is basically what we are here to discuss.

Mr. YOUNGER. If the question is on the unreasonableness of the rate, then why did you not go to the ICC to get that determination?

Mr. WATKINS. The carrier may go to the Commission to get that determination, but it would be after the Government had deducted from the carrier, and in some instances they have gone to the Commission.

Mr. YOUNGER. At the time when the railroads came in did you not have cases at that time where you were in contest with the General Accounting Office on the unreasonableness of rates?

Mr. WATKINS. We might have had some cases, but we probably had no cases that involved the same rates on the same commodities between the same areas, and under the proceeding before the Commission we could not have intervened in that case.

Mr. YOUNGER. I do not say you could have intervened in that case. But why did you not take your own case up?

Mr. WATKINS. The proceeding was for individual motor carriers, and some motor carriers did go before it. But there is no way for the industry as a whole to go before it.

The case which Mr. Walker referred to was a complaint that was filed by the United States against the railroads. It was not filed by the railroads. The railroads did not institute it, and only in issue was what was complained of by the Government in the complaint that was filed, and that would not have done us any good to be in that case.

Had the General Accounting Office or the other governmental agencies brought suit against a large number of motor carriers alleging that their rates were unreasonable, like they did in the rail case, it would have been defended and would have probably resulted in the same kind of a decision that resulted in the rail case. But the proceeding was instituted not by the carriers but by the Government.

I wish sincerely that they had seen fit to institute such a proceeding against the motor carriers instead of deducting as they did do.

Mr. FLYNT. Mr. Wolverton.

Mr. WOLVERTON. I think what Mr. Younger is trying to get at—and he is a layman and he looks at it, in a practical way, as a businessman would—is why it was not possible for the motor industry to have become a party to the suit that had been instituted, as you say, by the Government against the railroads.

I gathered from the previous statement made by one of the witnesses that it dealt with those matters that preceded a 10-year period. Would that not apply to motor carriers as well as to railroads?

Mr. WATKINS. The question of the statute of limitations would have, but the question of whether or not a particular rail rate on a particular commodity was or was not reasonable would have nothing to do with whether the same rate between the same points on the same commodity by motor carriers was reasonable or unreasonable.

Mr. WOLVERTON. Maybe that makes a difference from what I have in mind. I was under the impression that it was a general application by the Government, that it was not specifically in the sense that you are now mentioning it to me.

Mr. YOUNGER. Will the gentleman yield right there?

Mr. WOLVERTON. Let the witness hear what you say.

Mr. YOUNGER. I am following your same thought there. Is it true that that decision eliminated the possibility of the Government collecting on accounts 10 years previously?

Mr. WATKINS. No; it did not. That only decided that the Government's contention that certain rates, which were specified in the complaints—and there was something like 15 or 20 cases tried at the same time—were not unreasonable. That is all that that case decided. The question of whether or not they could proceed on cases 10 years before or any other time was not determined in that thing. This was a question of the reasonableness.

The finding was that the defendants were not shown to have violated the Interstate Commerce Act in respect to the rates, charges, and the practices that were resolved in this case.

Mr. WOLVERTON. In any event, it is water over the dam now. But I do feel that Mr. Younger was of the opinion that it was a matter that could have been decided at that time.

With respect to that I am not going to disagree with you because you have made a study of the proceeding and you are familiar with the general legal procedure. But from a practical standpoint I can see the justification for Mr. Younger having asked the question, why it was not all decided at one time.

Mr. WATKINS. I can, too, Mr. Wolverton. I can see its justification, but I think it is brought about probably by a misunderstanding of the exact issues of the proceeding.

Mr. WOLVERTON. On page 4 of your statement you refer to certain Senate amendments and to the amendment which—

made it clear that every claim for transportation charges cognizable by the General Accounting Office shall be forever barred unless presented to such Office by the carriers within 3 years from the date the Government paid such charges.

I think you recited that to indicate there was a difference of opinion which might need clarification. Was that the point you were making?

Mr. WATKINS. I made a statement by saying, first, that we thought this amendment was all right for 3 years. What I was trying to convey to you was that we thought that the same 3 years should be made applicable to the 2-year statute as to units, Government suits.

Mr. WOLVERTON. Then your thought that there was a difference of opinion was not based upon interpretation of the language of the Senate, but merely that it did not go as far as it should?

Mr. WATKINS. Oh, no. You are referring to the statement that I made that this might be construed as requiring us to file a claim with the General Accounting Office before suit could be brought on it?

Mr. WOLVERTON. That may be it. I just did not catch it fully.

I noticed you distinctly said that there was a difference of opinion and it might need some clarification. I am endeavoring to understand whether that clarification should be in the words of the statute or by some different or additional language to be used.

Mr. WATKINS. It probably should be by language in this amendment. The amendment of the Senate reads:

Every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received by the General Accounting Office.

They, of course, have the right to sue us without filing a claim.

This might be construed as requiring us to file a claim with the General Accounting Office before suit could be brought, and it is our thought that we have no objections to filing the claim within 3 years.

But we want the same privilege of suing within the same 3 years as we are willing to give the Government.

Mr. WOLVERTON. The point of my inquiry was to ascertain whether you felt there should be additional or new language used, and, if so, to indicate to you that it would be helpful if you would make, as part of your statement, whatever the change should be.

Mr. WATKINS. Mr. Wolverton, I appreciate that, and at this moment we have not thought out the language. We do think additional language should be included in there to make it clear.

I would like the privilege, Mr. Chairman, if we might have it, of submitting what we think will be proper language. Or I will be glad to confer with other interested parties in connection with this. But we are not prepared to recommend at this time any definite language.

Mr. FLYNT. Without objection, you may submit it to be included with your presentation here this morning.

(The matter referred to follows:)

A BILL To amend the Interstate Commerce Act to provide a three-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overpayments by the United States shall be made within three years from time of payment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act is amended as follows:

SECTION 1. (1) Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for on on behalf of the United States, the periods of limitatiou herein provided shall be extended to include three years from the date of (1) payment of charges for the transportation involved or (2) subsequent refund for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(2) Add the following uew paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be exteuded to include three years from the date of (1) payment of charges for the transportation involved or (2) subsequent refund for overpayment of such charges or (3) deduction made under section 322 of the Transportatiou Act of 1940 (49 U. S. C. 66), whichever is later."

(3) Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (1) payment of charges for the transportation involved or (2) subsequent refund for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(4) Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or ou behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be

extended to include three years from the date of (1) payment of charges for the transportation involved or (2) subsequent refund for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended by striking the period at the end and adding a colon and the following: "*Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills. The term 'overpayment' with respect to the transportation of property or passengers shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board, and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act. Every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred in the General Accounting Office unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of the charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

SEC. 3. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

Mr. WOLVERTON. Taking your statement as a whole, it would seem to me it is a very worthwhile statement in view of the fact that you approach the situation in a conservative way and in a sound way. You have clearly indicated your thought that the Government should not be too severely restricted as to the limitation of time because of the magnitude of its operations. But you do emphasize the fact, and I think it well to emphasize it, that there should be some reduction in the time limitation with respect to what now exists. Your thought in that respect and your whole statement reflects your desire, in my opinion, to be helpful in that matter.

Mr. WATKINS. Thank you.

Mr. WOLVERTON. That is all, Mr. Chairman.

Mr. FLYNT. Mr. Hale.

Mr. HALE. When did S. 377 pass the Senate?

Mr. WATKINS. It was August 9, 1957.

Mr. HALE. These amendments which you mention on page 4 are not incorporated in the House bills?

Mr. WATKINS. No; they are not. They are in the Senate bill.

Mr. HALE. You say you have no quarrel with the amendments?

You do not advocate them, but you are not opposed to them?

Mr. WATKINS. I just stated that we would like to later submit some definite language in the changing of the second amendment dealing with the 3 years to make certain that it does not bar a suit if the claim is not filed.

Mr. HALE. H. R. 8742 and H. R. 8743 are identical bills, are they not?

Mr. WATKINS. Yes; so I understand.

Mr. HALE. That is all, Mr. Chairman.

Mr. FLYNT. Thank you very much, Mr. Watkins.

The next witness will be Mr. Giles Morrow, president of the Freight Fowarders Institute.

Mr. Morrow, you may proceed.

STATEMENT OF GILES MORROW, PRESIDENT AND GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE, WASHINGTON, D. C.

Mr. MORROW. Mr. Chairman and members of the committee, my name is Giles Morrow. I am president and general counsel of the Freight Forwarders Institute, which is the organization representing freight forwarders subject to regulation under part IV of the Interstate Commerce Act.

I have a prepared statement, but, if I may simply submit it for the record, I think I can make a few remarks and shorten my testimony.

Mr. FLYNT. Without objection, your statement will be included in its entirety at this point in the record.

Mr. WOLVERTON. Mr. Chairman, it is only 3 pages.

I find sometimes that these witnesses who think they are going to shorten statements make it longer than if they read the statement.

Mr. MORROW. I will be very happy to read it. It will have some duplication in it, but it will be a different type of duplication, I think. If that is the will of the committee, I will just proceed to do this.

Mr. FLYNT. All right, Mr. Morrow, you may do so.

Mr. MORROW. The Freight Forwarders Institute is a national organization representing freight forwarders subject to regulation under part IV of the Interstate Commerce Act. The members of the institute have instructed me to testify in support of bills H. R. 8742 and H. R. 8743 which would provide a statute of limitations on actions involving charges for the transportation of passengers or property for the United States Government, and also provide a statutory limitation with regard to deductions for overcharges made by the Government.

The provisions of the bills which have specific application to freight forwardeds are sections 7, 8, and 9, beginning with line 14, page 3, and ending with line 13 on page 4 of the bills. Section 10, of course, applies to changes made by the bills in all parts of the act.

There is one typographical correction that should be made in the bills. On line 14 of page 3 the designation "section 406 (a) (4)" should be changed to read "section 406a (4)."

The merit of the changes proposed by these bills is self-evident. There is no reason why the Government, as the largest single shipper in the United States, should be treated either more favorably or less favorably than any other shipper in the matter of overcharge and undercharge claims.

Under prevailing practices, the Government makes deductions from carriers' current bills to satisfy claims on shipments that moved as many as 10 or more years in the past. To get an idea of the current situation with regard to deductions, I obtained from one member of the institute a breakdown of amounts paid to the Government in the form of deductions in 1957.

I should say that it is not quite accurate to say they were in the form of deductions. They were payments made probably prior to deductions based on negotiations and claims filed.

Of total payments made by this company in 1957, 20 percent covered shipments waybilled in 1943 to 1946, inclusive; 46.9 percent covered

shipments waybilled in 1952 to 1954, inclusive; and the remaining 33.1 percent covered shipments waybilled in 1955 to 1957, inclusive.

This practice of making deductions to cover overcharge claims on shipments that moved many years in the past works a great hardship on freight forwarders. The carriers cannot determine their financial condition at any given time when they are confronted with the possibility of undisclosed claims, involving sums of money that cannot be calculated, covering transactions that occurred over an indefinite period of time in the past. In a service industry, particularly an industry like freight forwarding which always has a very thin margin between receipts and disbursements, it is highly important for the companies to have accurate knowledge concerning resources and liabilities.

The recordkeeping and work incident thereto, which are necessary under present conditions, are burdensome to the forwarders and add to their cost of doing business. Insofar as commercial shipments are concerned, the forwarders know when their liability ends and they can store their old records. In the case of Government shipments, however, they must keep records for an almost indefinite period, and a great deal of time is spent in searching through the old records to determine the validity of claims.

These bills would not, of course, bring about absolute uniformity of treatment as between commercial shippers and the Government. Under the terms of the bills, the cause of action would accrue in the case of Government shipments upon the date of payment of the charges for the transportation involved. The cause of action accrues upon delivery or tender of delivery of commercial shipments.

Even though section 322 of the Transportation Act of 1940 provides for the payment of transportation charges on Government shipments upon presentation of bills and prior to audit by the General Accounting Office, a considerable period of time frequently elapses between movement of the freight and payment of the bills. This would, of course, extend the limitation period insofar as Government freight is involved.

The changes made by the bills nevertheless represent such a desirable and beneficial improvement over existing conditions that we do not suggest any change in their language.

The Senate made certain changes in its companion bill, S. 377, which was passed during the last session of Congress. If your committee should decide to accept the Senate amendments, we would offer no objections.

For the reasons stated, we hope that your committee will promptly report this legislation, to the end that it may be enacted during the present session of Congress.

I would like to comment, if I may, Mr. Chairman, on the two points made by Mr. Fisher, General Counsel of the General Accounting Office.

As to the first point, that is, that the statute on suits for overcharges and undercharges should be made 3 years, to conform with the provision for deductions, while I have no instructions from my membership, I am confident they would agree that that is a reasonable provision for the reasons, I think, very adequately stated by Mr. Edgar Watkins, who just preceded me.

I think, however, that, on the other point, the question of the definition of "overcharges," or leaving the act the way it is in section 322 today, we would also agree with the position stated by Mr. Watkins that there should be a definition. I think that Mr. Fisher made a good point that because of the Civil Aeronautics Act, a definition of overcharge should be written in this bill. But we would not like to see the term "overpayment" remain. We think the term "overcharge" is proper, for the reasons which Mr. Watkins stated, and I will not try to repeat them.

Mr. FLYNT. Would you prefer that the definition of "overcharge" be specifically included in the bill, rather than be there merely by reference?

Mr. MORROW. I think that would be preferable, for reasons which Mr. Fisher stated. We were satisfied to have it refer to the Interstate Commerce Act, but I think he has a good point; that that would not cover the Civil Aeronautics Act.

Mr. Watkins referred to certain testimony that Mr. Breithaupt may give for the railroads with regard to the amendment made to the Senate bill, and, while I have stated here that we have no objections to the bill as amended by the Senate, it might be that we could concur in what Mr. Breithaupt has to say. I cannot anticipate that, however, at this point.

That is all I have to say.

Mr. FLYNT. Mr. Wolverton.

Mr. WOLVERTON. In that almost-concluding paragraph of your statement, you said:

> The changes made by the bills, nevertheless, represent such a desirable and beneficial improvement over existing conditions that we do not suggest any change in their language.

I suppose what you have just said qualifies that statement.

Mr. MORROW. Yes, sir. Thank you for pointing that out. It does.

Mr. WOLVERTON. I would assume you are not prepared to state what, if any, language should be used to clarify, explain, or better express the purpose of the second Senate amendment, but that you would be willing to give it consideration and confer with the preceding witness to the end that we might have some uniformity, if possible, in your viewpoints.

Mr. MORROW. We would be very happy to do that.

Mr. WOLVERTON. That is all.

Mr. FLYNT. Thank you, Mr. Wolverton.

Thank you, Mr. Morrow.

Mr. Harry Breithaupt, general attorney, Association of American Railroads.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS

Mr. BREITHAUPT. Mr. Chairman, my name is Harry J. Breithaupt, Jr., and I am general attorney of the Association of American Railroads, with office in Washington, D. C. I realize that this statement has a somewhat formidable appearance, and, mindful, however, of what Mr. Wolverton has already said in connection with the presentation of the preceding witness, I don't intend to depart from the text, but only to omit portions of the text in reading it.

Mr. FLYNT. Would you like to have the entire statement incorporated in the record at this point?

Mr. BREITHAUPT. I would be grateful for that, Mr. Chairman.

Mr. FLYNT. Without objection, it will be incorporated in the record at this point.

(The statement referred to follows:)

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS, RE H. R. 8742 AND H. R. 8743

My name is Harry J. Breithaupt, Jr., and I am general attorney of the Association of American Railroads, with office in Washington, D. C. That association is a voluntary, nonprofit organization. Its membership comprises railroads that operate more than 95 percent of the total mileage of all railroads in the United States and have gross revenues approximating 95 percent or more of the total gross revenues of all railroads in the United States.

I appear here today on behalf of the Association of American Railroads, at the direction of its board of directors, to outline our views in respect of H. R. 8742 and H. R. 8743. In general, we favor the aims and objectives of these bills, which (to use the language in the title of the bills) are—

(1) to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government; and

(2) to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment.

It seems unnecessary, for the present purposes, to dwell at length upon the first of these two objectives. Under the law as it stands today, there are, in certain respects, unequal periods of limitation applicable to the various actions involving transportation charges that may arise as between carriers and the United States, and as between carriers and commercial (nongovernmental) users of transportation services. It is the purpose of these bills to make for greater uniformity in that regard by amending certain provisions of the Interstate Commerce Act in such a way that a 2-year statute of limitations will apply to the Government and to carriers in substantially the same fashion as it now applies to commercial shippers and to carriers. I do wish to suggest certain amendments as to this feature of the bills, but I believe that it will be best to come back to that later in my statement.

To effectuate the second of the bills' two purposes, section 322 of the Transportation Act of 1940 would be amended in such a way as to limit to 3 years the period within which the Government, in order to recoup excess payments made to carriers for transportation services, may deduct the amounts of such excess payments from other amounts subsequently found to be due the carriers. That section of the 1940 act provides that payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act or the Civil Aeronautics Act of 1938 shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is reserved to the United States to deduct the amount of any overpayment to any such carrier from any amoun subsequently found to be due the carrier.

This right of the Government to deduct from carriers' bills on account of previous overpayment or transportation charges is not limited as to time, a circumstance that has resulted in great inconvenience and expense and, in many instances, injustice to the carriers. The proposed requirement that deductions for excess payments be made within 3 years is a most desirable one. It would have the beneficial effect of requiring the audit of carriers' bills on a more current basis, and would result in the adjustment of transportation charges to a correct basis within a more reasonable time after the performance of the service. This would reduce clerical expense and the cost of preserving old records, and would make for an earlier certainty as to carriers' revenues.

It is unfair that carriers should be subject to deductions for such unlimited period of years as the convenience of the Government may dictate, with all of the attendant inconvenience, expense, uncertainty and, sometimes, injustice. We wholeheartedly support the suggested limitation of 3 years.

It will be noted that it is by section 9 of the bills before the subcommittee that section 322 of the Transportation Act of 1940 would be amended, and that there are two subsections of section 9. Subsection (1), on line 5 of page 4 of

the bills, would amend the 1940 act by striking out the word "overpayment" in section 322 and substituting for it the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act." This is a desirable change in that it would serve to clarify the existing law. In the first place, the word "overpayment" is not defined in the Interstate Commerce Act, while the term "overcharges" is defined. It means "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission" (sec. 16 (3) (g) of the act). Then, addition of the words "payment in excess of rates, fares, and charges estabilshed pursuant to section 22 of the Interstate Commerce Act" will serve to make it clear that the provisions of section 322 of the 1940 act apply not only to charges in excess of tariff charges but also to charges in excess of special governmental rates effective not under tariffs but under section 22 of the Interstate Commerce Act.

Subsection (2) of section 9 of H. R. 8742 and H. R. 8743 (see line 10 on p. 4 of the bills) provides for the 3-year limitation on the period within which the Government may make deductions on account of prior excess payments, a matter already discussed. It would add the following proviso at the end of section 322 of the Transportation Act of 1940: "*Provided, however*, That such deductions shall be made within 3 years from the time of payment of bills wherein overcharges are noted." To eliminate confusion we suggest that the words "wherein overcharges are noted" at the end of this proposed proviso be stricken from the bills on page 4, line 13. If they are not stricken, there will be reference in the main body of section 322 to "overcharge as defined in the Interstate Commerce Act *and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act*" [italic supplied] but the proviso will refer merely to "overcharges."

In this connection it should be noted that the Senate in passing a similar bill, S. 377, during the first session of this Congress adopted an amendment to that bill just as I am now suggesting and for the same reason (Congressional Record of Aug. 8, 1957, p. 12771).

If section 9 of H. R. 8742 and H. R. 8743, amended as I have suggested, becomes law, section 322 of the Transportation Act of 1940 will read as follows (omitted matter in brackets; new language in italics):

"Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any [overpayment] *overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act* to any such carrier from any amount subsequently found to be due such carrier: *Provided, however, That such deductions shall be made within three years from the time of payment of bills.*"

We favor and support such an amendment of section 322 of the Transportation Act of 1940.

Let me return now to those other sections of H. R. 8742 and H. R. 8743 that have as their object amendment of the Interstate Commerce Act "to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government." I mentioned earlier that I would suggest certain amendments as to this feature of the bills. We consider these amendments to be quite important.

We see three objectionable defects in the proposed amendments to the Interstate Commerce Act, and believe that these defects in the bills as introduced may be eliminated or overcome without in any way obstructing what appears to have been the intention of the authors. In that regard I shall speak only of, and refer to, sections 1 and 2 of the bills as they would amend section 16 (3) of the Interstate Commerce Act applicable to railroads; but what I have to say would be equally applicable, I believe, to other sections of the bills having to do with like amendments of parts II, III and IV of the Act as to motor carriers, water carriers and freight forwarders.

Under section 16 (3) of the Interstate Commerce Act, which provides a 2-year period of limitation for various types of actions involving transportation charges and which by section 2 of the bills now being considered (see line 4 on p. 2 of

H. R. 8742 and H. R. 8743) would be made specifically applicable to actions involving the transportation of property or passengers for or on behalf of the United States, the cause of action (in respect of a shipment of property) is deemed to accrue upon delivery or tender of delivery by the carrier (sec. 16 (3) (e) of the act). In other words, as might be expected, the cause of action accrues upon the rendition of the transportation service. A different rule, however, would be laid down by H. R. 8742 and H. R. 8743 in the case of transportation for or on behalf of the United States, for section 1 of those bills (see line 4 on p. 1 of the bills) would amend section 16 (3) (e) of the act to provide that:

"With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

To this enlargement of the ordinarily applicable period of limitations, so that in the case of transportation performed for the Government there will be a longer time within which actions brought before the Commission or courts may be begun, we do not object. There are no doubt good reasons for it. But the proposed amendment, as drafted, may have another and completely unintended effect. As worded, the new sentence found in section 1 of the bills might be construed to preclude a carrier from instituting an action against the Government for claimed transportation charges until the Government had paid those same charges, for instead of providing (as in the case of commercial shipments of property) that the cause of action is to accrue "upon delivery or tender of delivery" the bills would provide (in the case of Government transportation) that "the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States."

This can hardly be thought to reflect the authors' real intention. It does not seem reasonable to say that A may not sue B for what B owes A until B has paid A. Should B (in this case the Government) not be disposed to pay A (the carrier), then A could never sue B for what is rightfully due.

It should be made certain that no carrier, having performed a transportation service for or on behalf of the United States, is to be prevented from beginning an action at law for recovery of its charges or any part thereof upon rendition of the service and without awaiting the date of payment by the Government of the charges for the transportation involved.

As I shall point out after calling attention to 1 or 2 other matters, a simple amendment to the bills will cure this obviously unintended defect. It can easily be made clear that in the case of transportation for the Government, just as in any other case, the cause of action accrues upon performance of the service for which payment is due and at the same time assure, in the case of transportation for the Government, a period of limitations encompassing also 2 years from the date of payment or the date of subsequent collection or deduction of claimed overpayment of charges by the Government.

The second defect in the bills to which I should like to invite your attention also appears in the language of section 1 of H. R. 8742 and H. R. 8743. An ambiguity results from use of the word "collection" in the sentence proposed to be added to section 16 (3) (e) of the Interstate Commerce Act (see line 2 on p. 2 of the bills). It is not entirely clear just what would constitute a "collection" as the word is here used. Would a collection occur only when a carrier remitted (perhaps under protest as is not infrequently the case), at the request of the General Accounting Office, the amount of a claimed overpayment made by the United States; or is the word "collection" intended also to include a claimed overpayment recovered by the General Accounting Office on behalf of the United States by way of subsequent deduction from another bill of the carrier? Both situations should be covered; and they both may be easily covered in the amendment I am preparing to suggest.

Finally, an additional ambiguity results from the use of the word "overcharges" in the sentences proposed to be added to section 16 (3) (e) of the Interstate Commerce Act (see line 2 on p. 2 of H. R. 8742 and H. R. 8743). The word "overcharges" must be defined, presumably, in the light of section 16 (3) (g) of the act where it is said to mean "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission." Thus, the word "overcharges" does not contemplate payments in excess of rates, fares, and charges established for the Government pursuant to

section 22 of the Interstate Commerce Act. Yet, as we have already seen, section 322 of the Transportation Act of 1940 (where provision is made for deduction from subsequent carriers' bills) would, as proposed by these bills to be amended, contemplate deductions for either of these two kinds of overpayments.

The bills should be so amended as to remove any uncertainty on this score.

To overcome these defects and ambiguities resulting from the language employed in section 1 of H. R. 8742 and H. R. 8743, we suggest that there be no amendment at all of section 16 (3) (e) of the Interstate Commerce Act such as that now contemplated by section 1 of the bills but that, instead, there be added at the end of the proposed new section 16 (3) (i) of the act found in section 2 of the bills (line 4 on p. 2 of the bills) the following proviso:

"*Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include two years from the date of (1) payment of charges for the transportation involved or (2) subsequent collection for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

Let me repeat, as I stated earlier, that this proposal is not designed in any way to obstruct or alter in any way what we believe to have been the true intention of the authors of the bills before you. It is advanced with the sole object of perfecting the bills.

With this change in the bills (and, I take it for granted, in those sections of the bills having to do with motor carriers, water carriers, and freight forwarders as well) we believe that the proposed amendment of the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation for or on behalf of the United States Government is sound and constructive legislation and we support it. So that the precise nature of the amendments we propose to H. R. 8742 and H. R. 8743 may be seen at a glance, I am submitting as exhibit A a suggested revised version of portions of the bills.

Before concluding, I should like to take this opportunity to comment on another bill pending before this committee. It is S. 377, a measure passed by the Senate on August 8, 1957, similar to the two House bills to which my remarks have so far been directed. As a matter of fact, the two bills being considered are identical, I believe, with S. 377 as reported, with amendments, in the Senate on May 17, 1957, and before certain further amendments were agreed to on the floor of the Senate (Congressional Record, Aug. 8, 1957, p. 12771). All that I have said in respect to the 2 House bills is equally applicable in respect of S. 377, but there are 2 additional features of S. 377 as to which a word should be said.

You will recall that the bills I have been discussing would, in section 9 (2) (on p. 4 of the bills), so amend section 322 of the Transportation Act of 1940 as to provide that the Government's right to deduct from amounts due carriers the amount of any overpayment theretofore made is to be limited to 3 years from the time of the overpayment. Section 9 (2) of S. 377 contains a similar provision, but on the floor of the Senate, before passage, an amendment was adopted to toll the statute of limitations during time of war on such deductions by the Government (Congressional Record, Aug. 8, 1957, p. 12771). With this amendment, the proviso in question reads as follows (line 11 on p. 4 of S. 377):

"*Provided, however*, That such deductions shall be made within three years (not including any time of war) from the time of payment of bills."

We believe that the parenthetical exception "(not including any time of war)" would do much to detract from the beneficial effect that the 3-year limitation is intended to have, as it diminishes the protection carriers ought to have against prolonged delays in the settlement of transportation charges. We urge that no exception be made in any bill that this committee may report and the Congress enact.

No explanation of the reason for this amendment of S. 377 appears to have been given, but, presumably, it was proposed in recognition of the increase in volume of Government transportation, and transportation billing, during time of war and the possibility of a shortage of qualified Government personnel to handle such matters in time of war. We are nevertheless, opposed to inclusion of the words "(not including any time of war)" because of the delay they could create in final settlement of carriers' accounts. However, if your committee should see fit to report a bill including the words in question, I would ask you to bear in mind that carriers are confronted, in time of war, with like problems of increased Government transportation and shortage of trained personnel. If the time within which the Government may make deductions on account of overpayments to carriers is to be exclusive of "any time of war," then, as a matter of simple equity,

the time within which carriers may recover from the Government on account of undercharges should, likewise, be exclusive of "any time of war."

When the Senate passed S. 377, it also amended section 9 (2) of the bill in one final respect, having to do with a limitation upon the time within which any claim for transportation charges must be received in the General Accounting Office if it is not to be barred. This amendment would take the form of an additional proviso to be added to section 322 of the Transportation Act of 1940 as follows (line 14 on p. 4 of S. 377):

"*Provided further*, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall he forever barred unless such claim shall be received in the General Accounting Office within three years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation."

This proviso contains ambiguities much the same as those I have already mentioned in connection with the language found in section 1 of H. R. 8742 and H. R. 8743 after which it was obviously modeled. Should this committee see fit to include such a proviso in any bill it may report, then I ask that you consider adapting its language to follow the approach that I have suggested be taken in amending sections 1 and 2 of H. R. 8742 and H. R. 8743, and for much the same reasons. I am submitting as exhibit B such a revised version of the proviso in question.

That concludes my statement. I am very grateful for the opportunity you have given me to present these views on behalf of the Association of American Railroads.

Exhibit A

Revised Version of Sections 1, 2, and 9 (2) of H. R. 8742 and H. R. 8743 (85th Cong.)

(Omitted matter in brackets; new language in italic)

Section 1. [At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

Sec. 2.] Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include two years from the date of (1) payment of charges for the transportation involved or (2) subsequent collection for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later.*"

* * * * * * *

Sec. [9]. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66), is amended as follows:

* * * * * * *

(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however*, That such deductions shall be made within three years from the time of payment of bills [wherein overcharges are noted]."

Exhibit B

Revised Version of the Second Proviso in Section 9 (2) of S. 377 (85th Cong.) as Passed by the Senate on August 8, 1957

(Omitted matter in brackets; new language in italic)

"*Provided further*, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be

forever barred unless such claim shall be received in the General Accounting Office within three years from the date of (*1*) *accrual of the cause of action thereon, or* (*2*) payment of the charges for the transportation involved, or (*3*) [from the date of a] subsequent collection for [overcharges made by the United States for such transportation] *overpayment of such charges, or* (*4*) *deduction made pursuant to this section, whichever is later.*"

Mr. BREITHAUPT. Mr. Chairman and Mr. Wolverton, in general, we favor the aims and the objectives of the three bills which are before you. It seems unnecessary for present purposes to dwell at length upon the first of these two objectives of the several bills.

Under the law as it stands now, as has already been pointed out, there are, in certain respects, unequal periods of limitation applicable to the various actions involving transportation charges that may arise as between carriers and the United States, and as between carriers and commercial, nongovernmental users of transportation services.

It is the purpose of these bills to make for greater uniformity in that regard by amending certain provisions of the Interstate Commerce Act in such a way that a 2-year statute of limitations will apply to the Government and to carriers in substantially the same fashion as it now applies to commercial shippers and carriers.

I do wish to suggest certain amendments as to this feature of the bills, but I believe that it will be best to come back to that later in my statement.

To effectuate the second of the bills' 2 purposes, section 322 of the Transportation Act of 1940 would be amended in such a way as to limit to 3 years the period within which the Government, in order to recoup excess payments made to carriers for transportation services, may deduct the amounts of such excess payments from other amounts subsequently found to be due the carriers.

This right of the Government to deduct from carriers' bills on account of previous overpayment of transportation charges is not limited as to time, a circumstance that has resulted in great inconvenience and expense and, in many instances, injustice to the carriers.

The proposed requirement that deductions for excess payments be made within 3 years is a most desirable one. It would have the beneficial effect of requiring the audit of carriers' bills on a more current basis, and would result in the adjustment of transportation charges to a correct basis within a more reasonable time after the performance of the service. This would reduce clerical expense and the cost of preserving old records, and would make for an earlier certainty as to carriers' revenues.

It is unfair that carriers should be subject to deductions for such unlimited period of years as the convenience of the Government may dictate, with all of the attendant inconvenience, expense, uncertainty, and, sometimes, injustice. We wholeheartedly support the suggested limitation of 3 years.

Subsection (2) of section 9 of H. R. 8742 and H. R. 8743 (see line 10 on p. 4 of the bills) provides for the 3-year limitation on the period within which the Government may make deductions on acocunt of prior excess payments, a matter already discussed. It would add the following proviso at the end of section 322 of the Transportation Act of 1940:

Provided, however, That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted.

To eliminate confusion, we suggest that the words "wherein overcharges are noted" at the end of this proposed proviso by stricken from the bills on page 4, line 13. If they are not stricken, there will be reference in the main body of section 322 to—

overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges etsablished pursuant to section 22 of the Interstate Commerce Act—

but the proviso will refer merely to "overcharges" and not to payments in excess of section 22 rates.

In this connection, it should be noted that the Senate, in passing a similar bill, S. 377, during the first session of this Congress, adopted an amendment to that bill just as I am now suggesting and for much the same reason (Congressional Record, Aug. 8, 1957, p. 12771).

If section 9 of H. R. 8742 and H. R. 8743, amended as I have suggested, becomes law, section 322 of the Transportation Act of 1940 will read as follows (omitted matter in brackets; new language in italics:

Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any [overpayment] *overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act* to any such carrier from any amount subsequently found to be due such carrier: *Provided, however, That such deductions shall be made within three years from the time of payment of bills.*

We favor and support such an amendment of section 322 of the Transportation Act of 1940.

Let me return now to those other sections of H. R. 8742 and H. R. 8743 that have as their object amendment of the Interstate Commerce Act—

to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government.

I mentioned earlier that I would suggest certain amendments as to this feature of the bills. We consider these amendments to be quite important.

We see three objectionable defects in the proposed amendments to the Interstate Commerce Act, and believe that these defects in the bills as introduced may be eliminated or overcome without in any way obstructing what appears to have been the intention of the authors. In that regard, I shall speak only of, and refer to, sections 1 and 2 of the bills as they would amend section 16 (3) of the Interstate Commerce Act applicable to railroads. But what I have to say would be equally applicable, I believe, to other sections of the bills having to do with like amendments of parts II, III, and IV of the act as to motor carriers, water carriers, and freight forwarders.

Under section 16 (3) of the Interstate Commerce Act, which provides a 2-year period of limitation for various types of actions involving transportation charges and which, by section 2 of the bills now being considered (see line 4 on p. 2 of H. R. 8742 and H. R. 8743) would be made specifically applicable to actions involving the transportation of property or passengers for or on behalf of the United States, the cause of action—in respect of a shipment of property—is

deemed to accrue upon delivery or tender of delivery by the carrier (sec. 16 (3) (e) of the act).

In other words, as might be expected, the cause of action accrues upon the rendition of the transportation service. A different rule, however, would be laid down by H. R. 8742 and H. R. 8743 in the case of transportation for or on behalf of the United States, for section 1 of those bills (see line 4 on p. 1 of the bills) would amend section 16 (3) (e) of the act to provide that:

> With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.

To this enlargement of the ordinarily applicable period of limitations, so that, in the case of transportation performed for the Government, there will be a longer time within which actions brought before the Commission or courts may be begun, we do not object.

There are, no doubt, good reasons for it. But the proposed amendment, as drafted, may have another and completely unintended effect. As worded, the new sentence found in section 1 of the bills might be construed to preclude a carrier from instituting an action against the Government for claimed transportation charges until the Government had paid those same charges, for, instead of providing, as in the case of commercial shipments of property, that the cause of action is to accrue "upon delivery or tender of delivery," the bills would provide, in the case of Government transportation, that—

> the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States.

This can hardly be thought to reflect the authors' real intention. It does not seem reasonable to say that A may not sue B for what B owes A until B has paid A. Should B—in this case, the Government—not be disposed to pay A—the carrier—then A could never sue B for what is rightfully due.

Mr. FLYNT. Mr. Breithaupt, we will have to suspend. And I would like to inquire if Mr. Wolverton desires to ask such questions as he wishes before we adjourn the meeting.

Mr. WOLVERTON. Mr. Chairman, I would be very glad to, but it takes on the appearance of, "Here is your hat; what is your hurry?"

Mr. FLYNT. I cut Mr. Breithaupt off at the 8-minute period.

Mr. WOLVERTON. I think the statement that Mr. Breithaupt is making and the interests he represents are so large throughout this Nation, and so vitally affected, and the organizations for which he speaks represent all the major lines, at least, that I would like to know what he intends to do. Can he come back tomorrow or this afternoon during the general debate in the House? Or what? I do not think he should be cut off.

Mr. FLYNT. Mr. Wolverton, I agree with you completely, and, without objection, we will have Mr. Breithaupt, if it is convenient with him, appear as the first witness tomorrow morning before we

proceed on to the regular business which is scheduled by the subcommittee for tomorrow.

Mr. BREITHAUPT. That will be completely convenient for me, Mr. Chairman. I will be happy to be here.

Mr. FLYNT. If you will, we will take you promptly at 10.

Mr. BREITHAUPT. Thank you.

Mr. FLYNT. The meeting is adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:20 p. m., the subcommittee adjourned until 10 a. m., Thursday, May 1, 1958.)

RECOVERY OF OVERCHARGES

THURSDAY, MAY 1, 1958

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND
COMMUNICATIONS OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 1334, New House Office Building, Hon. John J. Flynt, Jr., presiding.

Mr. FLYNT. The committee will come to order, please.

At this time the subcommittee will resume hearings on H. R. 8742, H. R. 8743, and S. 377.

Mr. Harry Breithaupt, Jr., general attorney, Association of American Railroads, was on the stand yesterday when we were compelled to suspend because of the call of the House.

Mr. Breithaupt, you may proceed at the point where you left off yesterday.

STATEMENT OF HARRY J. BREITHAUPT, JR., GENERAL ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D. C.—Resumed

Mr. BREITHAUPT. At the conclusion of yesterday's hearings I had suggested there be an amendment to subsection (2) of section 9 of these House bills. I was about to speak when interrupted yesterday, to that and certain other defects as we see it in these bill.

If you will allow me to begin, I shall do so with the first full paragraph on page 5 of my prepared statement.

We see three objectionable defects in the proposed amendments to the Interstate Commerce Act, and believe that these defects in the bills as introduced may be eliminated or overcome without in any way obstructing what appears to have been the intention of the authors.

As I intimated yesterday, I shall speak only of and refer to sections 1 and 2 of the bills as they would amend section 16 (3) of the Interstate Commerce Act applicable to railroads. But what I have to say would probably be equally applicable, I believe, to other sections of the bills having to do with like amendments of parts II, III, and IV of the act as to motor carriers, water carriers, and freight forwarders.

Under section 16 (3) of the Interstate Commerce Act, which provides a 2-year period of limitation for various types of actions involving transportation charges and which by section 2 of the bills now being considered—see line 4 on page 2 of H. R. 8742 and H. R. 8743—would be made specifically applicable to actions involving the trans-

portation of property or passengers for or on behalf of the United States, the cause of action, in respect of a shipment of property, is deemed to accrue upon delivery or tender of delivery by the carrier—section 16 (3) (e) of the act.

In other words, as might be expected, the cause of action accrues upon the rendition of the transportation service. A different rule, however, would be laid down by H. R. 8742 and H. R. 8743 in the case of transportation for or on behalf of the United States, for section 1 of those bills—see line 4 on page 1 of the bills—would amend section 16 (3) (e) of the act to provide that:

> With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.

To this enlargement of the ordinarily applicable period of limitations, so that in the case of transportation performed for the Government there will be a longer time within which actions brought before the Commission or courts may be begun, we do not object.

There are, no doubt, good reasons for it. But the proposed amendment, as drafted, may have another and completely unintended effect. As worded, the new sentence found in section 1 of the bills might be construed to preclude a carrier from instituting an action against the Government for claimed transportation charges until the Government had paid those same charges, for, instead of providing, as in the case of commercial shipments of property, that the cause of action is to accrue "upon delivery or tender of delivery," the bills would provide, in the case of Government transportation, that—

> the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States.

This can hardly be thought accurately to reflect the authors' real intention. It does not seem reasonable to say that A may not sue B for what B owes A until B has paid A. Should B—in this case the Government—not be disposed to pay A—the carrier—then A could never sue B for what is rightfully due.

It should be made certain that no carrier, having performed a transportation service for or on behalf of the United States, is to be prevented from beginning an action at law for recovery of its charges or any part thereof upon rendition of the service and without awaiting the date of payment by the Government of the charges for the transportation involved.

As I shall point out after calling attention to 1 or 2 other matters, a simple amendment to the bills will cure this obviously unintended defect.

It can easily be made clear that in the case of transportation for the Government, just as in any other case, the cause of action accrues upon performance of the service for which payment is due and at the same time assure, in the case of transportation for the Government, a period of limitations encompassing also 2 years from the date of payment or the date of subsequent collection or deduction of claimed overpayment of charges by the Government, whichever is later.

The second defect in the bills to which I should like to invite your attention also appears in the language of section 1 of H. R. 8742 and H. R. 8743. An ambiguity results from use of the word "collection" in the sentence proposed to be added to section 16 (3) (e) of the Interstate Commerce Act—see line 2 on page 2 of the bills. It is not entirely clear just what would constitute a "collection" as the word is here used.

Would a collection occur only when a carrier remitted, perhaps under protest as is not infrequently the case, at the request of the General Accounting Office, the amount of a claimed overpayment made by the United States? Or is the word "collection" intended also to include a claimed overpayment recovered by the General Accounting Office on behalf of the United States by way of subsequent deduction from another bill of the carrier?

Both situations should be covered, and they both may be easily covered in the amendment I am preparing to suggest.

Finally, an additional ambiguity results from the use of the word "overcharges" in the sentence proposed to be added to section 16 (3) (e) of the Interstate Commerce Act. See line 2 on page 2 of H. R. 8742 and H. R. 8743. The word "overcharges" must be defined presumably in the light of section 16 (3) (g) of the act where it is said to mean—

> charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

Thus, the word "overcharges" does not contemplate payments in excess of rates, fares and charges established for the Government pursuant to section 22 of the Interstate Commerce Act. Yet, as we have already seen, section 322 of the Transportation Act of 1940—where provision is made for deductions from subsequent carriers' bills—would, as proposed by these bills to be amended, contemplate deductions for either of these two kinds of overpayments.

The bills should be so amended as to remove any uncertainty on this score.

To overcome these defects and ambiguities resulting from the language employed in section 1 of H. R. 8742 and H. R. 8743, we suggest that there be no amendment at all of section 16 (3) (e) of the Interstate Commerce Act such as that now contemplated by section 1 of the bills, but that, instead, there be added at the end of the proposed new section 16 (3) (i) of the act found in section 2 of the bills, line 4 on page 2 of the bills, the following proviso:

> *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include two years from the date of (1) payment of charges for the transportation involved or (2) subsequent collection for overpayment of such charges or (3) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later.

Let me repeat, as I stated earlier, that this proposal is not designed in any way to obstruct or alter in any way what we believe to have been the true intention of the authors of the bills before you. It is advanced with the sole object of perfecting the bills.

With this change in the bills—and, I take it for granted, in those sections of the bills having to do with motor carriers, water carriers, and freight forwarders as well—we believe that the proposed amend-

ment of the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation for or on behalf of the United States Government is sound and constructive legislation, and we support it.

So that the precise nature of the amendments we propose to H. R. 8742 and H. R. 8743 may be seen at a glance, I am submitting as exhibit A a suggested revised version of portions of the bills. That is for the convenience of the staff.

Before concluding, I should like to take this opportunity to comment on another bill pending before this committee. It is S. 377, a measure passed by the Senate on August 8, 1957, similar to the two House bills to which my remarks have so far been directed. As a matter of fact, the two bills being considered are identical, I believe, with S. 377 as reported, with amendments, in the Senate on May 17, 1957, and before certain further amendments were agreed to on the floor of the Senate (Congressional Record of August 8, 1957, p. 12771).

All that I have said in respect of the two House bills is equally applicable in respect of S. 377, but there are two additional features of S. 377 as to which a word should be said.

You will recall that the bills I have been discussing would, in section 9 (2)—on page 4 of the bills—so amend section 322 of the Transportation Act of 1940 as to provide that the Government's right to deduct from amounts due carriers the amount of any overpayment theretofore made is to be limited to 3 years from the time of the overpayment. Section 9 (2) of S. 377 contains a similar provision, but on the floor of the Senate, before passage, an amendment was adopted to toll the statute of limitations during time of war on such deductions by the Government (Congressional Record of August 8, 1957, p. 12771). With this amendment, the proviso in question reads as follows:

Provided, however, That such deductions shall be made within three years (not including any time of war) from the time of payment of bills.

We believe that the parenthetical exception "not including any time of war" would do much to detract from the beneficial effect that the 3-year limitation is intended to have, as it diminishes the protection carriers ought to have against prolonged delays in the settlement of transportation charges.

We urge that no such exception be made in any bill that this committee may report and the Congress enact.

No explanation of the reason for this amendment of S. 377 appears to have been given, but presumably it was proposed in recognition of the increase in volume of Government transportation and transportation billing during time of war and the possibility of a shortage of qualified Government personnel to handle such matters in time of war. We are nevertheless opposed to inclusion of the words "not including any time of war" because of the delay they could create in final settlement of carriers' accounts.

However, if your committee should see fit to report a bill including the words in question I would ask you to bear in mind that carriers are confronted in time of war with like problems of increased Government transportation and shortage of trained personnel.

If the time within which the Government may make deductions on account of overpayments to carriers is to be exclusive of any time of

war, then, as a matter of simple equity, the time within which carriers may recover from the Government on account of undercharges should likewise be exclusive of any time of war.

When the Senate passed S. 377 it also amended section 9 (2) of the bill in one final respect having to do with a limitation upon the time within which any claim for transportation charges must be received in the General Accounting Office if it is not to be barred. This amendment would take the form of an additional proviso to be added to section 322 of the Transportation Act of 1940 as follows:

Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation.

This proviso contains ambiguities much the same as those I have already mentioned in connection with the language found in section 1 of H. R. 8742 and H. R. 8743 after which it was obviously modeled.

Should this committee see fit to include such a provision in any bill it may report, then I ask that you consider adapting its language to follow the apporach that I have suggested be taken in amending sections 1 and 2 of H. R. 8742 and H. R. 8743, and for much the same reasons. I am submitting, as exhibit B, such a revised verison of the proviso in question.

That concludes my statement. I am very grateful for the opportunity you have given me to present these views on behalf of the Association of American Railroads.

Mr. FLYNT. Thank you, Mr. Breithaupt.

Mr. Wolverton.

Mr. WOLVERTON. I have no specific questions, Mr. Chairman.

I note that the witness has submitted amendment provisions which will require some considerable thought upon the part of the staff as well as of the committee and which I have not had the opportunity to examine until this moment. Therefore, I do not feel that I could properly reflect my views on such slight consideration. However, I do appreciate the statement that has been made by the witness. It indicates that close and careful consideration has been given to the proposed legislation, and the suggestions that are made are the result of great experience in matters of transportation growing out of the fact that this organization represents the combined knowledge and thought, so to speak, of our great railroad transportation system.

Mr. FLYNT. Thank you, Mr. Wolverton.

Mr. Hale?

Mr. HALE. No questions.

Mr. FLYNT. Mr. Derounian?

Mr. DEROUNIAN. Mr. Breithaupt, would this 3-year-from-time-of-payment bill apply in cases of fraud?

Mr. BREITHAUPT. The 3-year period within which the General Accounting Office might make deductions from carriers' bills? Is that what you have in mind?

Mr. DEROUNIAN. Just the same as the income-tax fraud has no statute of limitations, that they can reopen your account if they find fraud years back.

I am wondering if there is any provision in the present law which might be affected by this 3-year bill.

Mr. BREITHAUPT. So far as I am aware, Mr. Derounian, neither the Interstate Commerce Act nor the Transportation Act of 1940, the two statutes with which we are here dealing, have any specifically applicable language dealing with cases of fraud.

Whether or not these statutes of limitation control in the case of fraud I am not prepared to say. In any event, the bills before you make no change in the existing situation in that regard.

Mr. DEROUNIAN. Was the philosophy behind the provision "except in time of war," which you commented upon in your statement, due to shortage of personnel or was there another reason, do you think?

Mr. BREITHAUPT. I have read the Congressional Record of the provision in the Senate. The language in question was an additional committee amendment agreed to on the floor of the Senate on the day of the passage of the Senate bill.

Senator Smathers, who proposed the amendment in behalf of the Senate committee, made no explanation of the reason for it.

Mr. DEROUNIAN. As a matter of practical fact, it would seem to me that in time of war the railroads would have less personnel available than the Government.

Mr. BREITHAUPT. We are faced with exactly the same problem, but we believe that the beneficial effects to be derived from an early settlement of these accounts and disposal of old records is a calculated risk as to the trained personnel.

Mr. DEROUNIAN. That is all, Mr. Chairman.

Thank you, Mr. Breithaupt.

Mr. FLYNT. Mr. Breithaupt, thank you very much for your statement and for the suggestions which you have made to the committee in the consideration of this legislation.

Mr. BREITHAUPT. Thank you, Mr. Chairman.

Mr. FLYNT. This concludes the hearings on H. R. 8742, H. R. 8743, and S. 377.

(The following letter was received for the record:)

CHAMBER OF COMMERCE OF GREATER PHILADELPHIA,
TRAFFIC AND TRANSPORTATION COUNCIL,
Philadelphia, Pa., April 29, 1958.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives of the United States, House Office Building, Washington, D. C.

DEAR SIR: We shall appreciate your inserting the following statement in the record of the committee hearing on H. R. 8742 and H. R. 8743.

The traffic and transportation council of the Chamber of Commerce of Greater Philadelphia desires to express its support of the purpose and intent of the legislation embodied in H. R. 8742 and H. R. 8743, identical bills which would amend the Interstate Commerce Act so as to apply the same statute of limitations to United States Government shipments as apply generally to commercial shipments, with certain minor exceptions in favor of the Government.

We respectfully urge that the Committee on Interstate and Foreign Commerce report favorably on this principle as embodied in either of these bills.

Very truly yours,

MALCOLM A. BUCKEY.

(Whereupon, at 10:20 a. m., the committee adjourned.)

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LEGISLATIVE HISTORY

Public Law 85-762
S. 377

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DIGEST OF PUBLIC LAW 85-762

STATUTE OF LIMITATIONS ON TRANSPORTATION ACTS. Amends the Interstate Commerce Act so as to provide a three-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government and private shippers, and to provide that reductions for overcharges by the U. S. shall be made within three years from time of payment. Provides that cognizable claims by the General Accounting Office for charges for transportation shall be barred unless received by the GAO within three years.

Index and Summary of S. 377

Jan. 9, 1957	Sen. Bricker introduced S. 377, which was referred to the Senate Interstate and Foreign Commerce Committee. Print of bill.
May 17, 1957	Senate committee reported S. 377 with amendments. S. Rept. 334. Print of bill and report.
May 22, 1957	Senate passed over S. 377.
July 8, 1957	Senate passed over S. 377.
July 16, 1957	Rep. Flynt introduced H. R. 8742, which was referred to the House Committee on Interstate and Foreign Commerce. Print of bill
Aug. 5, 1957	Senate passed over S. 377.
Aug. 8, 1957	Senate passed S. 377 as reported.
Aug. 9, 1957	S. 377 referred to the House Interstate and Foreign Commerce Committee. Print of bill as referred.
June 18, 1958	House subcommittee ordered H. R. 8742 reported with amendment.
July 29, 1958	House committee ordered H. R. 8742 reported with amendment.
Aug. 1, 1958	House committee reported H. R. 8742 with amendment. H. Rept. 2346. Print of bill and report.
Aug. 5, 1958	House passed H. R. 8742 under suspension of rules and subsequently laid bill on table due to passage of S. 377.
Aug. 5, 1958	House passed S. 377 with amendments (language of H. R. 8742).
Aug. 12, 1958	Senate concurred in House amendments.
Aug. 26, 1958	Approved: Public Law 85-762.
	Hearings: House Interstate and Foreign Commerce Committee subcommittee; April 30, and May 1, 1958.

S. 377

85TH CONGRESS
1ST SESSION

S. 377

IN THE SENATE OF THE UNITED STATES

JANUARY 9 (legislative day, JANUARY 3), 1957

Mr. BRICKER introduced the following bill; which was read twice and referred to the Committee on Interstate and Foreign Commerce

A BILL

To establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 22 of the Interstate Commerce Act (49 U. S. C., sec. 22) is amended (1) by inserting after the section designation the letter "(a)", and (2) by adding at the end thereof the following:

"(b) Notwithstanding any other provision of law, any rates, fares, and charges, and rules, regulations, and practices with respect to the transportation of persons or property for or on behalf of the United States by any common carrier

subject to part I, II, III, or IV of this Act, offered, negotiated, or established under the provisions hereof by quotation or contract when accepted or agreed to by the Secretary of Defense, the Secretary of Agriculture, or the Administrator of the General Service Administration, or by any official or employee of the United States to whom either of them may delegate such authority, shall be conclusively presumed to be just, reasonable, and otherwise lawful, and shall not be subject to attack, or reparation, two years after the date of such acceptance or agreement upon any grounds whatsoever except for actual fraud or deceit, or clerical mistake. Such rates, fares, or charges, and rules, regulations, or practices, may be canceled or terminated upon not less than ninety days' written notice by the United States or by any of the other parties thereto.

"(c) Any such rates, fares, or charges, rules, regulations, or practices so made and accepted under the provisions hereof shall not be considered to have any bearing upon, or otherwise affect, the justness, reasonableness, or lawfulness of any rates, fares, or charges, or of any rules, regulations, or practices with respect to transportation services theretofore performed for, or on behalf of, the United States, nor shall the provisions of this section be construed as any

indication that similar rates, fares, or charges or similar rules, regulations, or practices theretofore effective were or were not binding upon or enforceable against the United States."

85TH CONGRESS
1ST SESSION

S. 377

A BILL

To establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act.

By Mr. BRICKER

JANUARY 9 (legislative day, JANUARY 3), 1957
Read twice and referred to the Committee on Interstate and Foreign Commerce

S. 377

A BILL

Sen. Dworshak inserted an editorial questioning the division of tax-amortization certificates between the Pacific Northwest States and defending the writeoff granted the Idaho Power Co. pp. 6398-9

4. FLOOD CONTROL; WATER UTILIZATION. Sen. Johnson inserted the Farmers' Home Administration's report on rain and flood damage in Texas, and with several other Senators commented on the value of flood prevention programs. pp. 6392-8

Sen. Morse discussed the need for coordinated water utilization projects with other Senators and urged the construction of the Hells Canyon dam. He inserted letters from constituents favoring the dam and a speech he made to a Maryland Co-op meeting. pp. 6405-8

5. TRANSPORTATION. Received a Minn. Legislature resolution urging that the tax on transportation be repealed. pp. 6366-7

The Interstate and Foreign Commerce Committee reported with amendments S. 377, to establish the finality of contracts between the Government and common carriers (S. Rept. 334), ~~and S. 943, to require contract motor carriers~~ to file their actual rates or charges rather than their minimums (S. Rept. 335). p. 6367

6. RESEARCH. Received a Calif. Legislature resolution urging establishment in Calif. of a soil and water conservation laboratory. p. 6366

7. STATEHOOD. Received a Calif. Legislature resolution urging statehood for Hawaii and Alaska. p. 6366

8. LEGISLATIVE PROGRAM. Sen. Johnson announced his hope that two or three appropriation bills would be ready for action in the next week (pp. 6365-6). He stated that the third supplemental appropriation bill would be considered Mon., May 20, and that the Appropriations Committee hoped to report the Interior Department and General Government Matters appropriation bills next week (p. 6392). He announced the possibility of early consideration of various bills, including S. Con. Res. 20, authorizing the FTC to investigate the newsprint industry, S. 1164, to make the evaluation of recreational benefits an integral part of project planning for water resources; S. Res. 78, to study critical raw materials and resources of certain Eastern Hemisphere countries; H.R. 2146, to require approval of Congress for all small reclamation projects; S. 60, the Fryingpan-Arkansas project, and S. 555, the Hells Canyon Dam construction bill (pp. 6399-6400). He urged the Committees to take action on each of the President's recommendations, and stated the schedule until sine die adjournment might require more frequent sessions. He stated appropriations bills would have priority. Sen. Sparkman announced that the housing bill would be reported in a few days (pp. 6400-1).

9. ADJOURNED until Mon., May 20. p. 6408

HOUSE

10. FORESTRY. A subcommittee of the Interior and Insular Affairs Committee ordered reported to the full Committee H.R. 4635, to provide for settlement and entry of public lands in Alaska containing coal, oil, or gas under Sec. 10 of the act of May 14, 1898. p. D428

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued May 20, 1957
For actions of May 17, 1957
85th-1st, No. 83

CONTENTS

HIGHLIGHTS: Sen. Hickenlooper inserted Secretary's Iowa State Club speech. Senate passed Commerce appropriation bill.

SENATE

1. APPROPRIATIONS. Passed as reported H.R. 6700, the Commerce Department appropriation bill for 1958 (pp. 6377-92). Sens. Barrett, Holland, Chavez, and Neuberger discussed the problem of forest highways (pp. 6382-5). Sens. O'Mahoney and Holland discussed restoration of Census Bureau appropriations (pp. 6387-90).

   Agreed to the replacement of Sen. Mansfield by Sen. Fulbright as conferee on H.R. 6871, the State-Justice-Judiciary Appropriation bill. p. 6371

   H.R. 7221, the third supplemental appropriation bill for 1957, was made the unfinished business. p. 6392

2. FORESTRY. Sen. Morse inserted the speech of the executive director of the Sierra Club to a Forest Service supervisor's meeting in which he urged more attention to the long run effects of forest culture, more research, and preservation of wilderness areas. pp. 6401-5

3. TAXATION. Sen. Wiley inserted a statement on behalf of S. 769, for a Federal Tax Commission, and inserted a report by the Committee for Economic Development favoring such a study. pp. 6371-3

Calendar No. 340

85TH CONGRESS, 1st Session | SENATE | REPORT No. 334

ESTABLISHING PERIODS OF LIMITATION FOR ACTIONS AT LAW UNDER THE INTERSTATE COMMERCE ACT AND FOR DEDUCTION OF OVERCHARGES BY THE UNITED STATES GOVERNMENT

MAY 17, 1957.—Ordered to be printed

Mr. SMATHERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 377]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 377), to establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. INTRODUCTION

The purpose of this bill is to amend section 22 of the Interstate Commerce Act under which the United States is allowed free or reduced rates for carriage, storage, or handling of property, and the transportation of persons or property at free or reduced rates. The bill proposes to provide that offers, or tenders, to the Government under section 22 by carriers subject to the Interstate Commerce Act shall be conclusively presumed to be lawful and not subject to attack 2 years after date of acceptance by a properly authorized official of the United States. The bill further provides that such arrangements may be canceled or terminated upon not less than 90 days' written notice.

Public hearings were held by the Surface Transportation Subcommittee and all desiring to testify were heard.

II. PROVISIONS OF THE BILL

S. 377 proposes to redesignate the present section 22 of the Interstate Commerce Act as subsection 22 (a) and add new subsections (b) and (c).

Section 22 (b) provides that rates, fares, or charges offered or established on behalf of any common carrier subject to the Interstate Commerce Act under the provisions hereof by quotation or contract, when accepted or agreed to by the Secretary of Defense, The Secretary of Agriculture, or the Administrator of General Services Administration, or any official or employee of the United States to whom such authority is delegated, shall be conclusively presumed to be lawful, and not subject to attack or reparation, 2 years after the date of acceptance or agreement upon any grounds except actual fraud or deceit, or clerical error. It is further provided that such rates, fares, and charges may be terminated upon 90 days' written notice by the United States or by any of the other parties thereto.

Section 22 (c) would prevent consideration of the reduced rates, fares, and charges as evidence of lawfulness of other rates and provides that its enactment shall have no effect on transactions other than those carried out under its provisions.

III. PRESENT STATE OF THE LAW

It should be noted that S. 377 provides that the 2-year period of limitations on contracts under section 22 of the Interstate Commerce Act begins to run, not upon delivery, or tender of delivery by the carrier, as in the case of commercial shipments, nor upon payment for transportation performed, but when the contract is "accepted or agreed to" by properly authorized Government officials. Thus, such a contract under the terms of the bill might be "accepted or agreed to," depending upon the exact meaning of those words, and 2 years or more might pass before traffic actually moves under the terms of such an agreement. Therefore, even before the Government makes use of the rates, fares, and charges provided by such a contract, the Government could already be bound to accept the terms as "conclusively presumed to be just, reasonable, and otherwise lawful" and not "subject to attack, or reparation" except upon grounds of fraud or clerical mistake. Under the act, commercial shippers may transport goods under published tariff rates for an indefinite period before appealing these rates to the ICC. The only limitation on the shipper's rights is that his recovery is limited to damages for 2 years preceding the appeal.

A number of bills of similar import have been before the Senate in recent years, including S. 4067, 81st Congress; S. 2355, 82d Congress; S. 906, 83d Congress, and S. 543, 84th Congress. The finality feature putting the Government at a disadvantage compared to the commercial shipper apparently accounted in part, at least, for the President's disapproval of S. 906, 83d Congress.

Another factor in its disapproval was the application of a 6-year statute of limitations for carriers to bring action against the Government while, by the weight of authority, the 2-year period of section 16 (3) (b) of the Interstate Commerce Act applies when the Government wishes to bring an action under the act. In the final paragraph of the President's memorandum of disapproval of S. 906, dated September 2, 1954, it was stated:

> I see no reason why the Government should not be subject to the same limitations on retroactive review of its freight charges as the commercial shipper. That result could be

accomplished equitably by an amendment to section 16 (3) of the Interstate Commerce Act specifying that the Government shall be subject to the 2-year limitation presently applicable to commercial shippers. The Government would then be on exactly the same basis under that section as all other shippers, and existing inequities in the present rate-making relationships between the Government and the eommon carriers would be removed. I recommend that such legislation be enacted at the next session of the Congress.

In the interest of fairness to all concerned, the committee believes that a 2-year statute of limitations, now applicable to commercial shippers, should be applied to shipments and transportation of persons by the Government. Likewise, it believes that carriers subject to the act should be elearly bound by the same 2-year period of limitations rather than the 6-year period now available to the carriers for suits against the Government.

A brief review of the holdings on this subject is deemed to be helpful at this point. Various actions are governed by periods of limitation in seetion 16 (3) of the Interstate Commerce Act. Under paragraph (a) of that section actions by carriers to recover their charges are required to be brought within 2 years. Under paragraph (b) eomplaints against carriers for retroactive review of rates are required to be filed within a period of 2 years. The date of delivery or tender of delivery of the shipment fixes the date from which the period runs.

The Court of Claims, however, has held that the 2-year period provided in paragraph (a) does not apply when the railroads are seeking to recover from the Government. The 6-year limitation of the Court of Claims is said to apply (28 U. S. C. 2501) (*Southern Pacific Co.* v. *U. S.*, 62 C. C. 391 (1926)). In this case it was held that the Interstate Commerce Act was enacted to apply in the main to commercial shippers and in view of the special arrangements allowed the Government under the aet and the absence of a clear exception in the law taking carriers' claims against the Government out of the category of those subjeet to the 6-year period established for the Court of Claims, that this period is applicable to such claims.

The Court of Claims, citing the Southern Pacific case, several years later followed the same rule in another case brought by a carrier against the Government (*Seaboard Air Line Co.* v. *U. S.*, 113 C. C. 437 (1949)). Therein the same precedent was followed with the Court of Claims stating that its original holding had not been questioned either by courts or changed by the terms of transportation legislation passed in the intervening years. This precedent was reiterated in *Union Pacific Railroad Co.* v. *U. S.* (114 C. C. 714 (1949)).

On the other hand, the right of the Government to file complaints against the earriers under paragraph (b) after the 2-year period is subjeet to question. The Government has contended that this limitation does not apply to the Government as a complainant relying on rulings in such cases as *U. S.* v. *United Mine Workers* (330 U. S. 258 (1947)), holding that statutes which in general terms divest preexisting rights do not apply to the sovereign unless specifically named; and *U. S.* v. *Dupont de Nemours and Co.* v. *Davis* (264 U. S. 456 (1924)), in which it was held that any rule that limits the right of the sovereign must be strictly eonstrued in favor of the sovereign.

Despite these contentions, the Interstate Commerce Commission has held that the limitation in paragraph (b) of section 16 (3) of the act does bar such complaints. While the precise question was recently pending before the United States District Court for the District of Columbia, a ruling was avoided on the grounds that the question was moot (*U. S.* v. *Interstate Commerce Commission*, 142 Fed. Supp. 741 (1955)).

Further, the Supreme Court in a recent decision "assumed without deciding" that the Government is barred by section 16 (3) of the Interstate Commerce Act from filing a complaint before the Commission beyond the 2-year period (*U. S.* v. *Western Pacific Railroad Co.*, 352 U. S. 59, 71 (1956)). In this case a qualification to this rule was made: Where the Government desires an administrative finding in cases "referred" to the Commission by the courts, the finding will be permitted without regard to section 16 (3).

IV. CHANGES IN LAW DEEMED NECESSARY

In view of the state of the law and the inequities that exist because of the present unequal periods of limitation that are found to exist for actions under the Interstate Commerce Act, the committee believes that enactment of the provisions of S. 377 would not adequately deal with the problem and proposes amendments to that bill.

Therefore, the committee recommends that section 16 (3) of part I of the Interstate Commerce Act, applicable to railroads, and other similar provisions in parts II, III, and IV, applicable to motor carriers, water carriers, and freight forwarders, respectively, should be amended in order that a 2-year statute of limitations will apply, as it does now to commercial shippers and to carriers, in substantially the same fashion to the Government and to carriers.

A slight change as compared with the current terms of the law is considered necessary, however. Under the present provisions of the Interstate Commerce Act, the cause of action is deemed to accrue upon delivery or tender of delivery by the carrier. The committee is of the belief that for the transportation of property or passengers for or on behalf of the Government, the cause of action should accrue on the date of payment of the charges for the transportation involved, or on the date of a subsequent deduction by the Government for payments deemed in excess of those properly applicable under tariffs lawfully on file with the Interstate Commerce Commission, or in excess of those established under section 22 of the Interstate Commerce Act.

The committee is of the opinion that the Government's authority to withhold from funds subsequently due the carriers because of payments deemed to be in excess of those legally applicable, should be adjusted to bring it more nearly into line with commercial practice.

At present the Government is granted extremely liberal terms under the act both as to extension of credit and the recovery of excess payments mentioned above. Under section 3 (2) of the act carriers are not prevented from "extending credit in connection with rates and charges on freight or express shipments transported for the United States" although such credit to commercial shippers is strictly regulated by the Interstate Commerce Commission. No change is necessary in this provision.

The law provides that payment for transportation of United States mail and passengers and property by or on behalf of the United States by common carrier subject both to the Interstate Commerce Act and the Civil Aeronautics Act of 1938 shall be made upon presentation of bills for the service and prior to audit by the General Accounting Office, but the right is reserved to the United States to deduct the amount of any overpayment to a carrier from any amount subsequently found to be due the carrier.

The right of the Government to deduct for overpayment is not limited as to time; the committee believes that a reasonable time limitation should be established for such deductions. It seems unfair that the carriers subject to this provision should be subject to deductions for as many years as meets the convenience of the Government. Therefore, the period should be made certain.

A reasonable limitation on recovery by the Government of excess payments by withholding from amounts subsequently due carriers should, in the opinion of the committee, be included among the amendments to S. 377.

The committee believes that deductions for excess payments should be made within a period of 3 years beginning with the date of payment to a carrier and should be based on "overcharges," to obtain consistency with the definitions of the Interstate Commerce Act, and payments in excess of rates, fares, and charges established in accordance with section 22 of the act.

The provisions of these amendments shall apply only to causes of action that accrue under the Interstate Commerce Act after the effective date of this legislation. The provisions amending section 322 of the Transportation Act of 1940 shall apply only to transportation performed and payments made therefor subsequent to the effective date of this act.

V. AGENCY COMMENTS

Enactment of the bill is opposed by the Department of Agriculture' Department of Defense, and General Services Administration. The latter two agencies submitted a draft bill providing for a 2-year statute of limitations on Government transportation consistent with the President's veto message on S. 906, 83d Congress. The Interstate Commerce Commission favors the principle of S. 377 but favors legislation that would preclude any review whatsoever by the Commission of rates offered under section 22 upon acceptance by the Government. The General Accounting Office objects to enactment of the measure because of the finality of the quotations upon acceptance by the Government and because of insufficient time allowed to protect the public interest contained in the provisions of the bill.

VI. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing laws made by the bill are shown as follows (existing laws proposed to be omitted are enclosed in brackets; new matter is printed in italics; existing laws in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT, AS AMENDED

* * * * * * *

SEC. 16 (3) (e). The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

* * * * * * *

SEC. 16 (3) (*i*). *The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part.*

* * * * * * *

SEC. 204a (4). The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

* * * * * * *

SEC. 204a (7). *The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part.*

* * * * * * *

SEC. 308 (f) (2). The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

* * * * * * *

SEC. 308 (f) (*6*). *The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part.*

* * * * * * *

SEC. 406a (4). The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the freight forwarder, and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transpor-*

tation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.

* * * * * * *

SEC. 406a (7). *The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part.*

* * * * * * *

TRANSPORTATION ACT OF 1940 (49 U. S. C. 66)

SEC. 322. Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any [overpayment] *overcharge, as defined in the Interstate Commerce Act, and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act,* to any such carrier from any amount subsequently found to be due such carrier[.]: *Provided, however, That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted.*

○

Calendar No. 340

85TH CONGRESS
1ST SESSION

S. 377

[Report No. 334]

IN THE SENATE OF THE UNITED STATES

JANUARY 9 (legislative day, JANUARY 3), 1957

Mr. BRICKER introduced the following bill; which was read twice and referred to the Committee on Interstate and Foreign Commerce

MAY 17, 1957

Reported by Mr. SMATHERS, with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That section 22 of the Interstate Commerce Act (49 U. S. C., sec. 22) is amended (1) by inserting after the section designation the letter "(a)", and (2) by adding at the end thereof the following:~~

~~"(b) Notwithstanding any other provision of law, any rates, fares, and charges, and rules, regulations, and practices with respect to the transportation of persons or property for or on behalf of the United States by any common carrier~~

subject to part I, II, III, or IV of this Act, offered, negotiated, or established under the provisions hereof by quotation or contract when accepted or agreed to by the Secretary of Defense, the Secretary of Agriculture, or the Administrator of the General Service Administration, or by any official or employee of the United States to whom either of them may delegate such authority, shall be conclusively presumed to be just, reasonable, and otherwise lawful, and shall not be subject to attack, or reparation, two years after the date of such acceptance or agreement upon any grounds whatsoever except for actual fraud or deceit, or clerical mistake. Such rates, fares, or charges, and rules, regulations, or practices, may be canceled or terminated upon not less than ninety days' written notice by the United States or by any of the other parties thereto.

"(c) Any such rates, fares, or charges, rules, regulations, or practices so made and accepted under the provisions hereof shall not be considered to have any bearing upon, or otherwise affect, the justness, reasonableness, or lawfulness of any rates, fares, or charges, or of any rules, regulations, or practices with respect to transportation services theretofore performed for, or on behalf of, the United States, nor shall the provisions of this section be construed as any indication that similar rates, fares, or charges or similar rules, regulations, or practices theretofore effective were or

~~were not binding upon or enforceable against the United States."~~

That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of

payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "Provided, however, That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted."

SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section

322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

Amend the title so as to read: "A bill to amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment."

Calendar No. 340

85TH CONGRESS
1ST SESSION

S. 377

[Report No. 334]

A BILL

To establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act.

By Mr. BRICKER

JANUARY 9 (legislative day, JANUARY 3), 1957
Read twice and referred to the Committee on Interstate and Foreign Commerce

MAY 17, 1957
Reported with amendments

10. TRANSPORTATION. Passed without amendment S. 937, amendment to the Interstate Commerce Act to forbid common carriers from charging more for short hauls than for long hauls on the same line. pp. 6597-8

At the request of Sen. Purtell, Passed over S. 377, to provide for the finality of contracts between the Federal Government and common carriers. p. 6598

The Interstate and Foreign Commerce Committee ordered reported with amendments S. 939, allowing free or reduced rates for Government freight and making contracts between the Government and carriers final. p. D445

11. ELECTRIFICATION. Several Senators discussed Sen. Morse's criticism of the Administration's rapid tax amortization grant to the Idaho Power Co. pp. 6563-72

Sen. Saltonstall inserted a tabulation of investor-owned power reactor projects. p. 6574

At the request of Sen. Clark, passed over S. 2051, amending the Atomic Energy Act. p. 6588

At the request of several Senators, passed over S. 555, authorizing a Hells Canyon dam. p. 6596

At the request of Sen. Clark passed over S. 60, authorizing the Fryingpan-Arkansas project. p. 6596

Sen. Smith, N. J., inserted an address on "Atomic Energy and the Quest for Peace," by Assistant Secretary of State Wilcox. pp. 6606-9

12. FOREIGN AID. Several Senators discussed the President's message on the Mutual Security Program, and inserted an editorial and Secretary of State Dulles' statement on the program to the Foreign Relations Committee. pp. 6550-3, 6575-6

13. FLOOD CONTROL. Sen. Johnson commented on the value of flood control and water conservation projects, and inserted several telegrams on the damages not encountered due to flood control projects. p. 6553

14. SOIL SURVEY. Received two reports on soil surveys and land classifications, for the Ainsworth Unit and the Farwell Unit of the Missouri Basin project. pp. 6553-4

15. DAIRY INDUSTRY. Sen. Aiken praised the American dairy industry while noting the 350th anniversary of its beginnings would be celebrated June 4 at Jamestown, Va. pp. 6573-4

16. BUDGET. Sen. Robertson noted the necessity to study many phases of the present high cost of Government if taxes are to be cut. p. 6575

17. ROADS. Sen. Neuberger urged control of roadside advertising on the Interstate Highway system and inserted a series of articles on billboard regulation. pp. 6576-9

18. COST OF LIVING. Sen. Humphrey defended himself from charges that he was a "profit-baiter" and inserted statements on the proposed study of monetary policy and inflation. pp. 6580-7

19. AWARDS. Sen. Hruska inserted Sen. Allott's statement on two Coloradans who received Honor Awards from this Department. p. 6587

20. FOREST PRODUCTS. At the request of Sen. Clark, passed over S. Con. Res. 20, authorizing FTC to study the newsprint industry. p. 6588

21. RECREATION. At the request of Sen. Clark, passed over S. 1164, to make the evaluation of recreational benefits part of the planning for any flood control, navigation, or reclamation project. p. 6588

22. RECLAMATION. At the request of Sen. Clark, passed over H.R. 2146, to require Congressional approval of small reclamation projects (p. 6588), and later made it the pending business (p. 6618).

23. PERSONNEL. Sen. Neuberger urged increased pay for Government employees. pp. 6618-21

ITEMS IN APPENDIX

24. SOIL BANK. Sen. Capehart inserted an editorial favoring action taken by the House to eliminate the soil bank program at the end of the current year. p. A3881

Rep. George inserted an editorial stating that House action on the soil bank program "proves not much at all, except that politics and the farm problem are inseparable..." p. A3911

25. FAMILY FARM. Sen. Capehart inserted an editorial, "Family Farm Holds Its Own," stating that family farms still make up the vital core of American agriculture and that the Farm Bureau is the "true champion" of the family farmer. pp. A3881-2

Rep. Ullman stated that "certainly the present economic situation facing the American farmer provides little cause for optimism," and inserted an Oregon State Legislature resolution urging enactment of legislation to aid the family-size farm. pp. a3896-7

26. RURAL DEVELOPMENT. Sen. Cooper inserted an address delivered before the Rural Development Program Work Conference. p. A3886

27. FARM PROGRAM. Sen. Capehart inserted Secretary Benson's address before the Republican Regional Conference, Cincinnati, Ohio. pp. A3887-90

28. POTATOES. Sen. Jackson inserted a letter sent to him by the Wash. Potato and Onion Shippers Association, Yakima, Wash. and stated that "the letter sets forth with admirable clarity some of the problems and the resulting condition of the potato industry in Washington State." p. A3897

29. BUDGET. Sen. Thurmond inserted two editorials favoring a reduced budget. pp. A3899-900, A3904-5

Rep. Lane inserted an editorial commenting on the budget and asking "are we spending ourselves into weakness and further inflation?" p. A3907

Rep. Minshall inserted two editorials, "Ike's Budget Appeal," and "The Battle of the Budget." pp. A3936-7

30. SURPLUS FOOD. Rep. Fulton commended and congratulated religious faith groups for their distribution of surplus commodities to the hungry people abroad and inserted a table listing surplus commodity shipments by American voluntary agencies during a nine-month period. pp. A3901-2

31. FORESTRY. Sen. Thurmond inserted an editorial, "The Plight of Plywood," which states that "if we are to maintain the level of our forest wealth, it is imperative that legislative action be taken to control the competition which today is driving more and more manufacturers of plywood out of business." pp. A3902-3

the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this act, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notices to a foreign corporation shall, for the purposes of this act, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia."

(b) In case such notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

CHILDREN BORN OUT OF WEDLOCK

The Senate proceeded to consider the bill (S. 1708) to amend the act entitled "An act relating to children born out of wedlock," approved January 11, 1951, which had been reported from the Committee on the District of Columbia, with amendments on page 2, line 6, after the word "administer", to strike out "oaths" and insert "oaths, or before any person duly authorized to administer oaths"; in line 14, after the word "words", to strike out "Health Officer" and insert "Health Officer of the District of Columbia"; and, in line 17, after the word "designated", to strike out "agent." " and insert "agent".''; so as to make the bill read:

Be it enacted, etc., That the first sentence of section 15 of the act entitled "And act relating to children born out of wedlock," approved January 11, 1951 (sec. 11–963, D. C. Code, 1951 edition) is amended to read as follows: "Whenever a certified copy of a marriage certificate is submitted to the Commissioners of the District of Columbia or their designated agent, establishing that the previously unwed parents of an illegitimate child have intermarried subsequent to the birth of said child and the paternity of the child has been judicially determined or has been acknowledged by the husband before said Commissioners or their designated agent, or has been acknowledged in an affidavit sworn to by such husband before a judge or the clerk of a court of record, or before an officer of the Armed Forces of the United States authorized to administer oaths, or before any person duly authorized to administer oaths and such affidavit is delivered to said Commissioners or their designated agent, a new certificate of birth bearing the original date of birth and the names of both parents, shall be issued and substituted for the certificate of birth then on file."

SEC. 2. That subsection (b) of section 16 of such act (sec. 11–964 (b), D. C. Code, 1951 edition) is hereby amended by striking therefrom the words "Health Officer of the District of Columbia" and inserting in lieu thereof the words "Commisisoners of the District of Columbia or their designated agent".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

AMENDMENT OF COMPULSORY SCHOOL ATTENDANCE AND SCHOOL CENSUS ACT RELATING TO THE DISTRICT OF COLUMBIA

The bill (S. 1842) to amend the act entitled "An act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes," approved February 4, 1925, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That the first sentence of section 1 of article II of the act entitled "An act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes," approved February 4, 1925 (43 Stat. 807; sec. 31–208, D. C. Code, 1951 ed.), is amended by striking therefrom "all children between the ages of 3 and 18 years permanently or temporarily residing in the District of Columbia, and annually thereafter or as frequently", and inserting in lieu thereof "all children under the age of 18 years permanently or temporarily residing in the District of Columbia and as frequently thereafter."

CONFERRING OF DEGREES BY DISTRICT OF COLUMBIA TEACHERS COLLEGE

The bill (S. 1906) authorizing the conferring of appropriate degrees by the District of Columbia Teachers College on those persons who have met the requirements for such degrees, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That (a) the Board of Education of the District of Columbia is hereby authorized to make all necessary rules and regulations for the organization and government of the District of Columbia Teachers College, and to fix the terms and conditions for the admission to and graduation from such college.

(b) Upon the recommendation of the president and faculty of the District of Columbia Teachers College, the said Board of Education is further authorized to prescribe courses of study to be pursued at such college, and to provide for the conferring of appropriate degrees for work performed, in course, upon those persons who have met the requirements for such degrees.

REMOVAL FOR CAUSE OF MEMBERS OF BOARD OF EDUCATION, DISTRICT OF COLUMBIA

The Senate proceeded to consider the bill (H. R. 192) to provide that members of the Board of Education of the District of Columbia may be removed for cause, which had been reported from the Committee on the District of Columbia, with an amendment, on page 1, at the beginning of line 7, to strike out, "is amended by inserting immediately after the second sentence the following new sentence: 'The judges of the United States District Court for the District of Columbia shall have power to remove any member of the Board of Education at any time for adequate cause affecting his character and efficiency as a member.' " and insert "is amended by inserting '(a)' immediately after 'SEC. 2.' and by adding at the end thereof the following new subsection: '(b) The judges of the United States District Court for the District of Columbia shall have power to remove any member of the Board of Education at any time for adequate cause affecting his character and efficiency as a member, after a public hearing on a verified complaint filed by the United States Attorney for the District of Columbia, or one of his assistants, and on issues framed by a verified answer. The United States District Court of the District of Columbia is empowered to promulgate rules to carry out the purpose of this subsection.' "

The amendment was agreed to.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

BILLS PASSED OVER

The bill (H. R. 4136) to extend the period within which the Export-Import Bank of Washington may make loans, was announced as next in order.

Mr. PURTELL. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 53) to consolidate into one act the laws administered by the Veterans' Administration relating to compensation, pension, hospitalization, and burial benefits, and to consolidate into one act the laws pertaining to the administration of the laws administered by the Veterans' Administration, was announced as next in order.

Mr. CLARK. Over.

The PRESIDING OFFICER. The bill will be passed over.

AMENDMENT OF SECTION 4 OF THE INTERSTATE COMMERCE ACT, AS AMENDED

The bill (S. 937) to amend section 4 of the Interstate Commerce Act, as amended, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That section 4 (1) of the Interstate Commerce Act, as amended (49 U. S. C. 4 (1)), is amended to read as follows:

"(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: *Provided*, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commis-

sion may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: *Provided further*, That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this part or part III and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: *And provided further*, That tariffs proposing rates subject to the provisions of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the provisions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon 1 day's notice."

ESTABLISHMENT OF PERIODS OF LIMITATION FOR ACTIONS AT LAW UNDER INTERSTATE COMMERCE ACT, ETC.—BILL PASSED OVER

The bill (S. 377) to establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act, was announced as next in order.

Mr. PURTELL. Let the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

Mr. MAGNUSON. Mr. President, did I correctly understand that the Senator from Connecticut asked that calendar 340, Senate bill 377, go over?

Mr. PURTELL. Yes. I did so by request. I understand that an amendment providing that the measure shall not be applicable in time of war may be proposed. I believe that at present the bill does not contain such a provision.

Mr. MAGNUSON. That is correct; it does not. Does the Senator from Connecticut know who proposes the amendment?

Mr. PURTELL. It was discussed briefly prior to the call of the calendar. There is no objection to the bill. If an amendment providing that the bill shall not apply during war is offered on the floor, I shall be glad to withdraw the objection.

Mr. MAGNUSON. We would like to have the bill passed. I see no objection to such an amendment.

Mr. PURTELL. I should be glad to propose the amendment, or perhaps the Senator from Washington wishes to propose it.

Mr. BRICKER. Mr. President, I should like to ask several questions regarding such an amendment. Is it the understanding of the Senator from Connecticut that, under such an amendment, the limitation would begin to run at the end of war?

Mr. PURTELL. It is my understanding that the limitation would apply only during war, and that the 2-year period would begin immediately at the end of war, and the 3-year period similarly.

Mr. BRICKER. I think the bill should go over.

Mr. PURTELL. Mr. President, the Senator from Ohio suggests that the bill go over. I believe it should go over; and if that is done, then, between today and the next call of the calendar, we can take care of the matter referred to.

Mr. MAGNUSON. Mr. President, I know the Senator from Ohio, who is the author of the bill, is anxious to have it passed.

Mr. PURTELL. I so understand. However, the Senator from Ohio agrees that we should take time to look carefully into the matter to which reference has been made.

Therefore, Mr. President, I ask that the bill go over.

The PRESIDING OFFICER. The bill will be passed over.

BILL PASSED OVER

The bill (S. 943) to amend section 218 (a) of the Interstate Commerce Act, as amended, to require contract carriers by motor vehicles to file with the Interstate Commerce Commission their actual rates or charges for transportation services, was announced as next in order.

Mr. CLARK. Over.

The PRESIDING OFFICER. The bill will be passed over.

RELIEF OF CERTAIN ALIENS

The Senate proceeded to consider the joint resolution (H. J. Res. 247) for the relief of certain aliens, which had been reported from the Committee on the Judiciary, with amendments, on page 1, line 9, after the name "Capone", to strike out "Pearl (Pik Chun) Ma, Ying Lun Ma,"; on page 2, line 22, after the word "Act", to strike out "Roger Eugene Caillaud"; at the beginning of line 24, to strike out "Kerttu Poutiainen Mayblom,"; on page 3, after line 7, to strike out:

SEC. 3. The Attorney General is authorized and directed to cancel any outstanding orders and warrants of deportation, warrants of arrest, and bonds, which may have issued in the cases of John William Forbes Petch and Mrs. Tsuma Ueda. From and after the date of the enactment of this Act, the said John William Forbes Petch and Mrs. Tsuma Ueda shall not again be subject to deportation by reason of the same facts upon which such deportation proceedings were commenced or any such warrants and orders have issued.

And, after line 16, to strike out:

SEC. 4. For the purposes of the Immigration and Nationality Act, Paolina Toscano shall be held and considered to have been lawfully admitted to the United States for permanent residence as of August 18, 1925, upon payment of the required visa fee.

The amendments were agreed to.

The amendments were ordered to be engrossed, and the joint resolution to be read the third time.

The joint resolution was read the third time and passed.

GRANTING OF STATUS OF PERMANENT RESIDENCE TO CERTAIN ALIENS

The Senate proceeded to consider the concurrent resolution (H. Con. Res. 89) approving the granting of the status of permanent residence to certain aliens, which had been reported from the Committee on the Judiciary, with amendments, on page 6, after line 5, to strike out "A–6197692, Kuo, Hsiao Lan."

After line 6, to strike out "0200 86579, Kuo, Hsiao Mei nee Yen."

On page 27, after line 8, to strike out "A–6386992, Wong, Yen Leong."

And, on page 37, at the beginning of line 5, to strike out "A–8881704" and insert "A–6881704."

The amendments were agreed to.

The concurrent resolution, as amended, was agreed to.

MARIA ADELAIDE ALESSANDRONI

The bill (S. 80) for the relief of Maria Adelaide Alessandroni was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of the Immigration and Nationality Act, Maria Adelaide Alessandroni shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

TSUI YUNG WONG

The bill (S. 153) for the relief of Tsui Yung Wong was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of the Immigration and Nationality Act, Tsui Yung Wong shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

GEORGIOS IOANNOU

The bill (S. 160) for the relief of Georgios Ioannou was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of the Immigration and Nationality Act, Georgios Ioannou shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this act, the Secretary of State shall instruct the proper quota-control officer to deduct one number from the appropriate quota for the first year that such quota is available.

6. NEWSPRINT. At the request of Sen. Talmadge passed over S. Con. Res. 20, authorizing FTC to investigate newsprint producers. p. 9887

7. RECREATION. At the request of Sens. Barrett and Talmadge passed over S. 1164, to make the evaluation of recreational benefits part of the planning for any water resources project. p. 9887

8. ATOMIC ENERGY. At the request of Sen. Clark passed over S. 2051, to amend the Atomic Energy Act of 1954 to provide liability protection for nuclear power-plants. p. 9887

9. TRANSPORTATION. At the request of Sen. Clark passed over S. 377, to make final certain contracts between the Government and common carriers. p. 9887

10. PERSONNEL. At the request of Sen. Barrett passed over S. 25, to relate the effective date of wage-board employees wage increases to the wage survey date. p. 9887

11. SAFETY. At the request of Sen. Barrett passed over S. 931, to reorganize the safety functions of the Government. p. 9887

12. WATER RESOURCES. At the request of Sen. Barrett passed over S. Con. Res. 28, to print a compilation of materials relating to the development of water resources in the Columbia River Basin. p. 9887

13. HOUSING. At the request of Sens. Talmadge and Barrett passed over H.R. 4602, to encourage veteran's residential construction in rural areas by raising the maximum limits for direct loans. p. 9887

14. FOREIGN TRADE; SURPLUS COMMODITIES. Sen. Humphrey inserted Sen. Cooper's statement before the Senate Agriculture and Forestry Committee on the operation under Public Law 480. pp. 9880-2

15. FLOOD CONTROL. Sen. Johnson urged greater efforts to control floods in the Southwest. pp. 9839-40

16. MARKETING. Sen. Wiley inserted a resolution from the Milwaukee city council urging enactment of H.R. 4504, to provide Federal aid in financing produce market improvements. p. 9840

17. ELECTRIFICATION. S. 2406, to construct improvement works for power in the Niagara River, became the Senate's unfinished business. pp. 9875, 9888, 9897-8
Sen. Morse inserted a letter criticizing private power companies for urging that private utilities construct the John Day dam. p. 9855

18. LEGISLATIVE PROGRAM. Sen. Johnson announced that until disposition of H.R. 6127, the Civil Rights bill, "The minority leader has pointed out that he does not intend to have other proposed legislation brought before the Senate except measures of an extreme emergency nature which can be agreed on by unanimous consent." pp. 9897-8

HOUSE

19. PUBLIC LANDS. Rep. Natcher discussed the problems of local communities caused by Federal ownership of large areas of land, and suggested that "every effort should be made by the Federal Government to release as much of this land as possible which is not necessary for the security of our Nation." pp. 9952-53

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued July 9, 1957
For actions of July 8, 1957
85th-1st, No. 118

CONTENTS

HIGHLIGHTS: Senate passed bills to: Extend authority for Federal administration of ACP. Provide standby authority for crop reinsurance in Puerto Rico. Sen. Humphrey criticized USDA disaster relief efforts in Minn.. Sen. Humphrey introduced and discussed bill to provide for control of noxious weeds on Federal lands.

SENATE

1. CROP INSURANCE. Passed without amendment H.R. 632, to extend standby authority for crop reinsurance to Puerto Rico. This bill will now be sent to the President. p. 9894

2. SOIL CONSERVATION. Passed as reported H.R. 1045, to extend until Dec. 31, 1962, the authority of the Secretary to administer the agricultural conservation payment program pending approval of State plans for administration of the program.

3. APPROPRIATIONS. Sen. Johnson inserted a table showing Senate action on the various appropriation bills. p. 9894

4. DISASTER RELIEF. Sen. Humphrey criticized the Department's efforts to bring assistance to flooded farmers in Minn., and inserted his letter to the Secretary urging coordinated action, and three farmer resolutions requesting special FHA loans. pp. 9919-20

5. MEATPACKING. The Daily Digest announced that the Judiciary Committee "defeated an amendment proposed by Sen. Dirksen to S. 1356, to amend the anti-trust laws by vesting in FTC jurisdiction to prevent monopolistic practices in commerce in the meat industry." p. D622

and for other purposes, was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 4815) to provide permanent authority for the Postmaster General to establish postal stations at camps, posts, or stations of the Armed Forces, and at defense or other strategic installations, and for other purposes, was announced as next in order.

Mr. CLARK. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The concurrent resolution (S. Con. Res. 20) authorizing an investigation by the Federal Trade Commission into the activities and practices of companies engaged in the production, distribution, or sale of newsprint in interstate commerce was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The resolution will be passed over.

The bill (S. 495) to authorize the acquisition of the remaining property in square 725 in the District of Columbia and the construction thereon of additional facilities for the United States Senate was announced as next in order.

Mr. CLARK. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 728) to authorize the acquisition of the remaining property in squares 725 and 724 in the District of Columbia for the purpose of extension of the site of the additional office building for the United States Senate was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1164) to make the evaluation of recreational benefits resulting from the construction of any flood-control, navigation, or reclamation project an integral part of project planning, and for other purposes, was announced as next in order.

Mr. BARRETT. Over, Mr. President.

Mr. TALMADGE. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1639) to provide for the suspension of the vesting of alien property and the liquidation of vested property, under the Trading With the Enemy Act, was announced as next in order.

Mr. CLARK. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 864) to provide for the transfer of certain lands to the State of Minnesota was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2051) to amend the Atomic Energy Act of 1954, as amended, and for other purposes, was announced as next in order.

Mr. CLARK. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 377) to establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act was announced as next in order.

Mr. CLARK. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 25) relating to effective dates of increases in compensation granted to wage board employees was announced as next in order.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 931) to provide for the reorganization of the safety functions of the Federal Government and for other purposes was announced as next in order.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1873) to amend sec. 104 (e) of the Civil Aeronautics Act of 1938 in order to authorize permanent certification for certain air carriers operating between the United States and Alaska was announced as next in order.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The concurrent resolution (S. Con. Res. 28) to print a compilation of materials relating to the development of the water resources of the Columbia River and its tributaries was announced as next in order.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The concurrent resolution will be passed over.

The bill (S. 1310) for the relief of certain aliens was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

Mr. BARRETT. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 4602) to encourage new residential construction for veterans' housing in rural areas by raising the maximum amount in which direct loans may be made, and for other purposes, was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 98) to provide for the establishment and operation of a mining and metallurgical research establishment in the State of Minnesota was announced as next in order.

Mr. BARRETT. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States was announced as next in order.

Mr. TALMADGE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1730) to implement a treaty and agreement with the Republic of Panama, and for other purposes, was announced as next in order.

Mr. BARRETT. Over, Mr. President.

Mr. MANSFIELD. Just a moment, Mr. President.

Mr. CLARK. Just a minute, with regard to Calendar No. 488, Senate bill 1730.

Mr. MORSE. Over, Mr. President.

The PRESIDING OFFICER. The bill will be passed over.

ELEANOR FRENCH CALDWELL

The bill (H. R. 1754) for the relief of Eleanor French Caldwell was considered, ordered to a third reading, read the third time, and passed.

MRS. THOMAS L. DAVIDSON

The bill (H. R. 4342) for the relief of Mrs. Thomas L. Davidson was considered, ordered to a third reading, read the third time, and passed.

JACKSON SCHOOL TOWNSHIP, IND.— BILL PASSED OVER

The bill (S. 807) for the relief of Jackson School Township, Ind., was announced as next in order.

Mr. BARRETT. Mr. President, may we have an explanation of the bill?

Mr. TALMADGE. Is the Senator from Indiana present?

Mr. BARRETT. Mr. President, I ask unanimous consent that the bill go to the foot of the calendar.

Mr. KNOWLAND. Mr. President, I think the Senator from Mississippi [Mr. EASTLAND] is ready to explain the bill.

Mr. BARRETT. I shall be delighted to have it explained.

Mr. EASTLAND. Mr. President, this bill authorizes the payment of $275,000 to Jackson School Township, of Cass County, Ind., as compensation for the loss of utility of its elementary school at Lincoln, Ind., and for future costs to be incurred in relocating such school to a site remote from the noise and danger caused by military aircraft flights to and from Bunker Hill Air Base.

The bill as originally introduced provided for a contribution on the part of the United States of $300,000, which has been reduced by the committee to $275,000, and the committee has further provided that such payment will be subject to a conveyance to the United States by the school authorities of the school site, which has been rendered useless for school and other public assembly purposes.

Testimony taken by a subcommittee from school officials and Members of Congress as well as the Department of the Air Force and the Office of Education of the Department of Health, Education, and Welfare developed that, so far as is known at present, only three schools in the United States have been so affected, in that the impairment of the existing school facilities amounts virtually to confiscation of the property by the United States.

Mr. BARRETT. Mr. President, I thank the Senator for his explanation. I withdraw my reservation of objection.

Mr. TALMADGE. Mr. President, I ask that the bill be passed over.

The PRESIDING OFFICER. The bill will be passed over.

BILL PASSED OVER

The bill (S. 2406) to authorize the construction of certain works of improvement in the Niagara River for power and other purposes was announced as next in order.

Mr. BARRETT. Over.

The PRESIDING OFFICER. The bill will be passed over.

HIDEKO TAKIGUCHI PULASKI

The bill (S. 562) for the relief of Hideko Takiguchi Pulaski was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Hideko Takiguchi Pulaski, shall be held and considered to be the natural-born alien child of Sfc. John Pulaski, a citizen of the United States.

SANDRA ANN SCOTT

The bill (S. 1335) for the relief of Sandra Ann Scott was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Sandra Ann Scott, shall be held and considered to be the natural-born alien child of David W. Scott, a citizen of the United States.

MRS. MARION HUGGINS

The Senate proceeded to consider the bill (S. 294) for the relief of Mrs. Marion Huggins, which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, for the purposes of the Immigration and Nationality Act, Mrs. Marion Huggins shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

SEOL BONG RYU

The Senate proceeded to consider the bill (S. 591) for the relief of Seol Bong Ryu, which had been reported from the Committee on the Judiciary, with an amendment, in line 6, after the word "natural-born," to insert "alien," so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Seol Bong Ryu, shall be held and considered to be the natural-born alien child of Brooks Doran and Violet Risley Anderson, citizens of the United States.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

DON Q. GEE

The Senate proceeded to consider the bill (S. 1268) for the relief of Don Q. Gee, which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause and insert:

That, for the purposes of the Immigration and Nationality Act, Don Q. Gee shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this act, upon payment of the required visa fee.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

JUNKO MATSUOKA ECKRICH

The Senate proceeded to consider the bill (S. 1321) for the relief of Junko Matsuoka Eckrich, which had been reported from the Committee on the Judiciary, with an amendment, in line 5, after the word "be", to insert "issued a visa and be", so as to make the bill read:

Be it enacted, etc., That notwithstanding the provisions of paragraph (12) of section 212 (a) of the Immigration and Nationality Act, Junko Matsuoka Eckrich may be issued a visa and be admitted to the United States for permanent residence if she is found to be otherwise admissible under the provisions of such act: *Provided*, That this act shall apply only to grounds for exclusion under such paragraph known to the Secretary of State or the Attorney General prior to the date of the enactment of this act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

AYAKO YOSHIDA

The Senate proceeded to consider the bill (S. 1353) for the relief of Ayako Yoshida, which had been reported from the Committee on the Judiciary, with an amendment, on page 2, line 5, after the word "of", to insert "sections 242 and 243", so as to make the bill read:

Be it enacted, etc., That, in the administration of the Immigration and Nationality Act, Ayako Yoshida, the fiancée of James R. Beasley, a citizen of the United States, shall be eligible for a visa as a nonimmigrant temporary visitor for a period of 3 months, if the administrative authorities find (1) that the said Ayako Yoshida is coming to the United States with a bona fide intention of being married to the said James R. Beasley and (2) that she is otherwise admissible under the Immigration and Nationality Act. In the event the marriage between the above-named persons does not occur within 3 months after the entry of the said Ayako Yoshida she shall be required to depart from the United States and upon failure to do so shall be deported in accordance with the provisions of sections 242 and 243 of the Immigration and Nationality Act. In the event that the marriage between the above-named persons shall occur within 3 months after the entry of the said Ayako Yoshida the Attorney General is authorized and directed to record the lawful admission for permanent residence of the said Ayako Yoshida as of the date of the payment by her of the required visa fee.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

FRANCESCA MARIA ARRIA

The Senate proceeded to consider the bill (S. 1452) for the relief of Francesca Maria Arria, which had been reported from the Committee on the Judiciary, with an amendment in line 6, after the word "of", to insert "Mrs. Maria Arria,", so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 203 (a) (3) and 205 of the Immigration and Nationality Act, Francesca Maria Arria shall be held and considered to be the minor natural-born child of Mrs. Maria Arria, an alien lawfully admitted to the United States for permanent residence.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

NICOLETA P. PANTELAKIS

The Senate proceeded to consider the bill (S. 1496) for the relief of Nicoleta P. Pantelakis, which had been reported from the Committee on the Judiciary, with an amendment in line 6, after the word "natural-born", to insert "alien", so as to make the bill read:

Be it enacted, etc., That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Nicoleta P. Pantelakis, shall be held and considered to be the natural-born alien child of Mr. and Mrs. S. L. Lamprose, citizens of the United States.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

ERIKA OTTO

The Senate proceeded to consider the bill (S. 1502) for the relief of Erika Otto, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Erika Otto, the fiance of M. Sgt. Daniel Mobray O'Neill, a citizen of the United States, shall be eligible for a visa as a nonimmigrant temporary visitor for a period of 3 months: *Provided*, That the administrative authorities find that the said Erika Otto is coming to the United States with a bona fide inention of being married to the said M. Sgt. Daniel Mobray O'Neill and that she is found admissible under all of the provisions of the Immigration and Nationality Act, other than section 212 (a) (9): *Provided further*, That this exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice has knowledge prior to the enactment of this act. In the event the marriage between the above-named persons does not occur within 3 months after the entry of the said Erika Otto, she shall be required to depart from the United

H. R. 8742

A BILL

85TH CONGRESS
1ST SESSION

H. R. 8742

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1957

Mr. FLYNT introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date

of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the fol-

lowing sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any

action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however,* That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted."

SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

85TH CONGRESS
1ST SESSION

H. R. 8742

A BILL

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

By Mr. FLYNT

JULY 16, 1957
Referred to the Committee on Interstate and Foreign Commerce

5. GRAIN STANDARDS. Passed as reported S. 2007, to permit charges for grain standards inspection appeals including overtime expenses. pp. 12344-5

6. PERSONNEL. Received from the Budget Bureau a proposed bill to provide a uniform pay system for Federal employees engaged in inspection service, to authorize a uniform system of fees and charges for such services; to the Post Office and Civil Service Committee. Insofar as USDA personnel is concerned, the proposal relates only to ARS. p. 12299

Received from the Civil Service Commission a proposed bill to amend the Classification Act of 1949 to facilitate proper classification of supergrade positions; to the Post Office and Civil Service Committee. p. 12299

Sen. Yarborough urged passage of the postal pay raise bill and urged that the President sign it if passed. pp. 12307-8

At the request of Sen. Barrett, passed over S. 25, to make the effective date of compensation changes of wage board employees retroactive to 30 days after the initial survey began. p. 12310

Passed without amendment S. 1901, to require overtime pay only for irregularly scheduled hours above the regular weekly tour of duty. p. 12323

At the request of Sen. Purtell passed over S. 734, to revise the compensation schedules of the Classification Act of 1949. p. 12330

7. NEWSPRINT. At the request of Sen. Clark, passed over S. Con. Res. 20, to authorize the FTC to investigate newsprint producers and distributors. p. 12310

8. RECREATION. At the request of Sen. Clark, passed over S. 1164, to make the evaluation of recreational benefits part of the planning for any water resources project. p. 12310

9. TRANSPORTATION. At the request of Sen. Barrett, passed over S. 377, to make final certain contracts between the Government and common carriers. p. 12310

10. SAFETY. At the request of Sen. Barrett, passed over S. 931, to reorganize the safety functions of the Government. p. 12310

11. WATER RESOURCES. At the request of Sen. Hruska, passed over S. Con. Res. 28, to print a compilation of materials relating to the development of water resources in the Columbia River Basin. p. 12310

Sen. Johnson urged a program to develop an integrated Federal water program for Texas, and inserted letters from the Bureau of Reclamation and the Corps of Engineers pledging their cooperation. pp. 12297-9

12. HOUSING. At the request of Sen. Clark, passed over H.R. 4602, to encourage veterans' residential construction in rural areas by raising the maximum limits for direct loans. p. 12310

13. T. V. A. At the request of Sen. Clark passed over S. 1869, to amend the TVA Act to authorize the sale of bonds for expansion of TVA power plants. p. 12311

14. FORESTRY. Passed without amendment H.R. 7522, to authorize the Secretary of the Interior to extend for two years the lumbering rights of the McCloud Lumber Co. in the Shasta National Forest. p. 12313. This bill will now be sent to the President.

15. RECLAMATION. At the request of Sen. Clark, passed over S. 2120, to authorize construction of the Mercedes Division, lower Rio Grande rehabilitation project. p. 12313

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued August 6, 1957
For actions of August 5, 1957
85th-1st, No. 139

CONTENTS

HIGHLIGHTS: (See Page 7.)

SENATE

1. SURPLUS COMMODITIES; FOREIGN TRADE. Agreed to the conference report on S. 1314, to extend the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480) for one year, to increase the authorization under Title I from $3 billion to $4 billion, to authorize $300 million additional under Title II for famine relief, to permit barter transactions with, and Sec. 416 donations to, Iron Curtain countries, except Russia and Communist China, and to permit up to 25% of foreign currencies received to be loaned for market development work. pp. 12347, 12348-55. See Digest 117 for other provisions of the bill agreed to. This bill will now be sent to the President.

2. PEANUTS. Passed without amendment H.R. 6570, to exempt green peanuts from marketing quotas. p. 12345. This bill will now be sent to the President.

3. DAIRY PRODUCTS. Passed with amendments S. 1696, to provide for furnishing the Coast Guard and the U.S. Merchant Marine Academy with surplus dairy products. Agreed to an amendment by Sen. Magnuson to extend the bill to the entire Coast Guard instead of to the Coast Guard Academy. pp. 12342-3

4. INSECT CONTROL. Passed as reported S. 1805, to relieve certain persons of expense for khapra beetle eradication. pp. 12343-4

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

THE NAVY

The Chief Clerk read the nomination of Adm. Arthur W. Radford, to be an admiral on the retired list of the Navy.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DIPLOMATIC AND FOREIGN SERVICE

The Chief Clerk proceeded to read sundry further nominations in the Diplomatic and Foreign Service.

Mr. BIBLE. I ask unanimous consent that the further nominations in the Diplomatic and Foreign Service be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

THE FEDERAL COAL MINE SAFETY BOARD OF REVIEW

The Chief Clerk read the nomination of Charles R. Ferguson to be a member of the Federal Coal Mine Safety Board of Review.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

THE PUBLIC HEALTH SERVICE

The Chief Clerk proceeded to read sundry nominations in the Public Health Service.

Mr. BIBLE. I ask unanimous consent that the nominations in the Public Health Service be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

FEDERAL COMMUNICATIONS COMMISSION

The Chief Clerk read the nomination of Frederick W. Ford to be a member of the Federal Communications Commission.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF THE TREASURY

The Chief Clerk read the nomination of Fred C. Scribner, Jr., to be Under Secretary of the Treasury.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

COMPTROLLER OF CUSTOMS

The Chief Clerk read the nomination of Edwin A. Leland, Jr., to be Comptroller of Customs, with headquarters at New Orleans, La.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

COLLECTORS OF CUSTOMS

The Chief Clerk proceeded to read sundry further nominations of collectors of customs.

Mr. BIBLE. I ask unanimous consent that the further nominations of collectors of customs be confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNITED STATES DISTRICT JUDGE

The Chief Clerk read the nomination of Alfred A. Arraj to be United States district judge for the District of Colorado.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

UNITED STATES ATTORNEYS

The Chief Clerk proceeded to read sundry further nominations of United States attorneys.

Mr. BIBLE. I ask unanimous consent that the further nominations of United States attorneys be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

UNITED STATES MARSHALS

The Chief Clerk proceeded to read sundry further nominations of United States marshals.

Mr. BIBLE. I ask unanimous consent that the further nominations of United States marshals be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

POSTMASTER NOMINATION PASSED OVER

The Chief Clerk read the nomination of Victor R. Milligan to be postmaster at Ketchikan, Alaska.

Mr. BIBLE. Mr. President, I ask that the nomination be passed over.

The PRESIDING OFFICER. Without objection, the nomination will be passed over.

The Chief Clerk proceeded to read sundry further nominations of postmasters.

Mr. BIBLE. I ask unanimous consent that the further nominations of postmasters, with the exception of the one passed over, be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

THE ARMY

The Chief Clerk proceeded to read sundry nominations of officers to be placed on the retired list.

Mr. BIBLE. Mr. President, I ask unanimous consent that the nominations of officers to be placed on the retired list of the Army be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

The Chief Clerk proceeded to read sundry nominations of officers for temporary appointment in the Army of the United States.

Mr. BIBLE. I ask unanimous consent that the nominations of officers for temporary appointment in the Army of the United States be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

The Chief Clerk proceeded to read sundry nominations of officers for promotion as Reserve commissioned officers of the Army.

Mr. BIBLE. I ask unanimous consent that the nominations of officers for promotion as Reserve commissioned officers of the Army be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

The Chief Clerk read the nomination of Maj. Gen. Francis William Billado to be a major general in the Reserve of the Army.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

THE AIR FORCE

The Chief Clerk proceeded to read sundry nominations of officers to be placed on the retired list in the Air Force.

Mr. BIBLE. I ask unanimous consent that the nominations be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

FEDERAL POWER COMMISSION—NOMINATION PASSED OVER

The Chief Clerk read the nomination of Jerome K. Kuykendall to be a member of the Federal Power Commission.

Mr. BIBLE. Mr. President, I ask that the nomination be passed over.

The PRESIDING OFFICER. Without objection, the nomination will be passed over.

NOMINATIONS IN THE ARMED SERVICES, ON THE VICE PRESIDENT'S DESK—FIRST GROUP

The Chief Clerk proceeded to read sundry nominations in the armed services which had been placed on the Vice President's desk.

Mr. BIBLE. I ask that the nominations in this group, which are on the Vice President's desk, be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

SECOND GROUP OF ARMY NOMINATIONS ON THE VICE PRESIDENT'S DESK

The Chief Clerk proceeded to read sundry nominations for appointment or reappointment in the Regular Army which had been placed on the Vice President's desk.

Mr. BIBLE. I ask unanimous consent that this group of nominations be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are confirmed en bloc.

Mr. BIBLE. Mr. President, I ask unanimous consent that the President be immediately notified of all nominations confirmed this day.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

Mr. BIBLE. I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

THE CALENDAR

Mr. BIBLE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of bills on the calendar to which there is no objection, commencing with Order No. 11.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BIBLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. BIBLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MONRONEY in the chair). Is there objection?

Mr. McNAMARA. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue the call of the roll.

The legislative clerk resumed the call of the roll.

Mr. CLARK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The clerk will proceed with the call of the calendar.

BILLS PASSED OVER

Mr. CLARK. Mr. President, I ask that all bills and resolutions beginning with Calendar No. 11 through Calendar No. 302 be passed over.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The bills and resolutions passed over are as follows:

Senate Concurrent Resolution 2, to create a joint congressional committee to make a full and complete study and investigation of all matters connected with the election, succession, and duties of the President and Vice President.

Senate Resolution 24, to amend rule XIV of the Standing Rules of the Senate.

S. 913, to provide permanent authority for the Postmaster General to establish postal stations at camps, posts, or stations of the Armed Forces, and at defense or other strategic installations and for other purposes.

H. R. 4815, to provide permanent authority for the Postmaster General to establish postal stations at camps, posts, or stations of the Armed Forces, and at defense or other strategic installations, and for other purposes.

Senate Concurrent Resolution 20, authorizing an investigation by the Federal Trade Commission into the activities and practices of companies engaged in the production, distribution, or sale of newsprint in interstate commerce.

S. 495, to authorize the acquisition of the remaining property in square 725 in the District of Columbia and the construction thereon of additional facilities for the United States Senate.

S. 728, to authorize the acquisition of the remaining property in squares 725 and 724 in the District of Columbia for the purpose of extension of the site of the additional office building for the United States Senate.

S. 1164, to make the evaluation of recreational benefits resulting from the construction of any flood-control, navigation, or reclamation project an integral part of project planning, and for other purposes.

S. 1639, to provide for the suspension of the vesting of alien property and the liquidation of vested property, under the Trading With the Enemy Act.

S. 864, to provide for the transfer of certain lands to the State of Minnesota.

S. 2051, to amend the Atomic Energy Act of 1954, as amended, and for other purposes.

BILLS AND RESOLUTIONS PASSED OVER

The bill (S. 377) to establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act was announced as next in order.

Mr. BARRETT. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 25) relating to effective dates of increases in compensation granted to wage board employees was announced as next in order.

Mr. BARRETT. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 931) to provide for the reorganization of the safety functions of the Federal Government and for other purposes was announced as next in order.

Mr. BARRETT. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 1873) to amend section 401 (e) of the Civil Aeronautics Act of 1938, in order to authorize permanent certification for certain air carriers operating between the United States and Alaska was announced as next in order.

Mr. HRUSKA. Over, by request.

The PRESIDING OFFICER. The bill will be passed over.

The concurrent resolution (S. Con. Res. 28) to print a compilation of materials relating to the development of the water resources of the Columbia River and its tributaries was announced as next in order.

Mr. HRUSKA. Over, by request.

The PRESIDING OFFICER. The resolution will be passed over.

RELIEF OF CERTAIN ALIENS—BILL RECOMMITTED TO COMMITTEE ON THE JUDICIARY

The bill (S. 1310) for the relief of certain aliens was announced as next in order.

Mr. EASTLAND. Mr. President, on June 10, 1957, Senate bill 1310 was reported favorably by the Committee on the Judiciary and was placed on the calendar. Subsequent to this action, information was received that an administrative remedy appears to be available I ask unanimous consent that Senate bill 1310 be recommitted to the Committee on the Judiciary.

The PRESIDING OFFICER. Is there objection to recommittal of the bill? The Chair hears none, and it is so ordered.

BILLS PASSED OVER

The bill (H. R. 4602) to encourage new residential construction for veterans' housing in rural areas by raising the maximum amount in which direct loans may be made, and for other purposes, was announced as next in order.

Mr. CLARK. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 98) to provide for the establishment and operation of a mining and metallurgical research establishment in the State of Minnesota was announced as next in order.

Mr. BARRETT. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (H. R. 6127) to provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States was announced as next in order.

The PRESIDING OFFICER. H. R. 6127 is the unfinished business, and will be passed over.

The bill (S. 1730) to implement a treaty and agreement with the Republic of Panama, and for other purposes, was announced as next in order.

Mr. BARRETT. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 807) for the relief of Jackson School Township, Indiana, was announced as next in order.

Mr. CLARK. Over.

The PRESIDING OFFICER. The bill will be passed over.

The bill (S. 2406) to authorize the construction of certain works of improvement in the Niagara River for power and other purposes was announced as next in order.

Mr. CLARK. Over.

The PRESIDENT OFFICER. The bill will be passed over.

RELIEF OF CERTAIN ALIENS

The joint resolution (H. J. Res. 322) for the relief of certain aliens was announced as next in order.

Mr. ALLOTT. Over.

The PRESIDING OFFICER. The resolution will be passed over.

Mr. ALLOTT subsequently said: Mr. President, I ask unanimous consent that the Senate return to Calendar No. 572, House Joint Resolution 322, and proceed with its consideration.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Colorado?

There being no objection, the joint resolution (H. J. Res. 322) for the relief

14. TRANSPORTATION. Passed as reported S. 1384, to revise the definitions of contract and common carriers by motor vehicles. pp. 12769-71

Passed as reported S. 377, to make contracts between the Government and common carriers final upon payment. pp. 12771-2

15. FARM PROGRAM. Sen. Carlson urged a domestic parity plan for wheat, commended the commodity groups for the plans they have been developing in their fields, and stated that domestic parity plans would aid livestock producers by alloting more lands to wheat and less to feed grains. pp. 12805-8

Sen. Capehart inserted a statement on the 4½ year record of the administration, including the farm program which he concluded has been successful in a difficult situation despite controversies in many areas, and listing the new programs developed in this administration. pp. 12773-9

16. SUGAR. Consented to ratify Executive L, 85th Congress, the protocol amending the International Sugar Agreement of 1953 to revise the export quotas of certain states. pp. 12733-6

17. DROUGHT RELIEF. Sen. Williams criticized CCC for allegedly failing to use the cheapest transportation rate in shipping cottonseed to drought relief areas, and for paying the railroads for a retroactive rate increase after CCC had been promised a lower rate. He inserted a statement by the Comptroller General on the matter, and concluded: "This is just another instance indicating the widespread mismanagement of the drought relief program under Mr. Kenneth L. Scott and further emphasizes the need of a thorough examination of this program by the Agriculture Committee." p. 12761

18. T.V.A. Began debate on S. 1869, to permit TVA to finance its power program by issuing revenue bonds, after adopting all committee amendments. pp. 12782, 12808-14, 12821-2

19. WATER RESOURCES. Sen. Johnson urged passage of addtional water development projects not included in the public works appropriation bill, to gain a "breakthrough on the Texas water problem." pp. 12701-2

20. INTEREST RATES; HOUSING. Sen. Sparkman criticized the President for withholding funds for FNMA loans, and inserted a table showing the effective interest rates on FHA-insured loans. pp. 12702-3

21. FOREIGN TRADE. Sen. Capehart inserted a statement on the Economic Conference of the Organization of American States, urging more trade with Latin America to strengthen those nations and discussing the economic situation there. pp. 12749-52

22. LIVESTOCK; FARM PRICES; FORESTRY. Sens. Mansfield, Murray, Bible, and Neuberger discussed the economic situation in Mont., Neb., and Ore. Sen. Murray pointed to the cost-price squeeze on farmers, and inserted articles on the economic decline in Mont., including a letter from the Mont. Cattlemen's Ass'n "Cattlemen are Seeking Fair Share of Beef Dollar." Sen. Neuberger discussed unemployment in the lumber industry and stated "We must have wise policies followed in our Government if all these assets are to be properly harnessed." pp. 12762-7

23. LEGISLATIVE PROGRAM. Sen. Johnson stated that he expected to have Sat. sessions and that he hoped the session could be concluded this month (pp. 12703, 12814-15). He further stated that certain controversial nominations would be

considered following the measures on the Calendar next week, including the nomination of Don Paarlberg to be Ass't Secretary (pp. 12748, 12814-15). He announced a call of the calendar on Mon., Aug., 12. (pp. 12781-2).

ITEMS IN APPENDIX

24. WATER RESOURCES. Sen. Johnson inserted an editorial calling for teamwork by Federal, State, and local agencies toward the development of our water resourc p. A6439

25. INFLATION. Sen. Wiley inserted his recent radio address, "Inflation--America's No. 1 Domestic Problem." p. A6439

26. INDUSTRIAL USES; RESEARCH. Sen. Capehart inserted an editorial, "Farm Research, commenting on the report of the Commission on Increased Industrial Use of Agricultural Products. p. A6442

27. PERSONNEL. Extension of remarks of Rep. McFall in favor of "immediate and meaningful pay raises for Federal employees." pp. A6448-9

28. BUDGETING. Extension of remarks of Rep. Cannon stating that "partial financing is the heart of H.R. 8002, the so-called accrued expenditure bill...", and inserting an article, "Hand to Mouth?" opposing this proposed legislation. pp. A6450-1

Rep. Michel inserted an editorial, "The Way to Economy," which states that "Theoretically it (H.R. 8002) would save some $3 billion a year. But we doubt that it would accomplish much more than the present system is able to do in cutting Government spending." p. A6460

29. FARM INCOME. Extension of remarks of Rep. Coad inserting a report he made to his constituents as to the activities of the Congress, including farm income, and the soil bank program. pp. A6453-4

30. HUMANE SLAUGHTER. Extension of remarks of Sen. Neuberger inserting an editorial, Humanity in Animal Slaughter, and stating "it seems to me anyone who reads th editorial must come to the conclusion that our proposed legislation is not on justified, but many years overdue." p. A6455

31. IRRIGATION. Extension of remarks of Rep. Coad stating that "I took active part in opposing H.R. 3753 which was a bill to make loans to desert entrymen for the purpose of irrigating their lands obtained under patent rights," and inserting an article, "For Once We Agree With Coad." p. A6456

32. BUILDINGS. Extension of remarks of Rep. Bow commending the utilization of foreign currencies acquired by the U.S. for constructing buildingsabroad to house our representatives. p. A6460

33. COCONUT OIL. Extension of remarks of Rep. Dingell urging the enactment of legislation to remove 3-cent excise tax on coconut oil, and inserting an editorial favoring the enactment of such legislation. pp. A6475-76

34. GRANTS-IN-AID. Rep. Udall inserted a newspaper editorial, "There Are Good Arguments in Favor of Federal Aid", discussing the Federal grant-in-aid program pp. A6474-75

ing the regulation of motor carriers, the Commission and the carriers themselves have experienced great difficulty in distinguishing between common and contract motor carriers. In fact, the testimony presented to the committee shows that there are many contract carriers performing a service that is indistinguishable from common carrier service. The matter, unfortunately, is agravated by a decision of the Supreme Court in the Contract Steel Carriers case which permits a contract carrier to perform service for an unlimited number of shippers. Prior to that decision the Commission had done its best to provide distinctions between common and contract carriage in various ways, including what it called a specialization test. This test rather effectively defined the limits of contract carriage in most cases, but it could not prevent unreasonable expansion in some situations. In the Contract Steel case the Commission made its finding that the carrier, operating for 69 substantial shippers of iron and steel, was in fact a common carrier. The case went to court and the Supreme Court finally held that the specialization test had been met by this carrier and that it could continue to aggressively search for new and more business.

The decision of the Supreme Court clearly means that the Congress should do something to correct the situation. The Commission came to us with a bill designed to solve the problem. The language of that bill was unacceptable to certain of the parties, especially the contract carriers. Those contract carriers, however, support the bill as now drafted. Private carrier representatives offer no objections to the revised legislation. The new bill, while not as drastic as the Interstate Commerce Commission's proposals, achieves many of the purposes sought to be achieved by the Commission in its bill. In view of all this, the committee recommends that the bill be approved.

Mr. JOHNSON of Texas. Mr. President, I ask that the committee amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. The question is on agreeing, en bloc, to the amendments.

The amendments, en bloc, were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

FINALITY OF CONTRACTS BETWEEN THE UNITED STATES GOVERNMENT AND CERTAIN COMMON CARRIERS OF PASSENGERS AND FREIGHT SUBJECT TO THE INTERSTATE COMMERCE ACT

Mr. JOHNSON of Texas. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 340, S. 377.

The bill be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 377) to establish the finality of contracts between the Government and common carriers of passengers and freight subject to the Interstate Commerce Act.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas.

The motion was agreed to; and the Senate proceeded to consider the bill which had been reported from the Committee on Interstate and Foreign Commerce with an amendment to strike out all after the enacting clause and insert:

That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "Provided, however, That such deductions shall be made within 3 years from the time of payment of bills wherein overcharges are noted."

SEC. 10. The provisions of this act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this act. The provisions of this act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this act.

Mr. SMATHERS. Mr. President, I submit an amendment to the committee amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The LEGISLATIVE CLERK. On page 5, line 20, after "three years" insert "(not including any time of war)."

On page 5, line 21, after the word "bills", to strike out "wherein overcharges are noted."

On page 5, line 21, after the word "bills", insert a colon and the following proviso:

Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within 3 years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation.

Mr. SMATHERS. Mr. President, I ask unanimous consent to have printed in the RECORD a statement prepared by me relating to the amendment to toll the statute of limitations during time of war.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON AMENDMENT TO S. 377 TO TOLL THE STATUTE OF LIMITATIONS DURING TIME OF WAR

When S. 377 was passed over on the call of the calendar on May 22, it was agreed that an amendment would be offered to the bill to toll the statute of limitations during time of war on deduction of overcharges by the United States. The bill now provides that the right is reserved to the United States Government to deduct the amount of any overcharge from any amount subsequently found to be due a carrier with the proviso that the deduction shall be made within 3 years from the time of payment. The amendment is to provide that the 3-year period for such deductions should not include any time of war. An amendment on page 5, line 20, to insert after "3 years" the words "(not including any time of war)" would accomplish this change. The statute of limitations on such withholding by the General Accounting Office would thus be tolled during time of war.

Another amendment for the sake of clarity is offered by striking on page 5, line 21, the words "wherein overcharges are noted." The amendment dropping these words would eliminate confusion by omitting this surplus phrase.

As a result of these changes, the proviso beginning on page 5, lines 19–21, would read as follows: "*Provided, however,* That such

deductions shall be made within 3 years (not including any time of war) from the time of payment of bills."

Mr. BRICKER. Mr. President, the bill had been held up pending the submission of the amendment offered by the distinguished Senator from Florida. As I understand, there are no other amendments except those added by the committee.

Mr. SMATHERS. The Senator from Ohio is correct.

Mr. BRICKER. With this amendment I am satisfied, and I think the bill should pass.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida to the committee amendment.

The amendment to the amendment was agreed to.

Mr. SMATHERS. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement on the amendment to S. 377 which was requested by the Comptroller General of the United States.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON AMENDMENT TO S. 377 REQUESTED BY COMPTROLLER GENERAL OF THE UNITED STATES

The Comptroller General of the United States has a request for an amendment to S. 377 that he makes in the light of the limitation on deductions for overcharges in transportation bills by the General Accounting Office to a period of 3 years. He says:

"It seems notable that the 10-year limitation on claims against the United States cognizable in the General Accounting Office provided in 31 U. S. C. 71a and 236, would, if not amended as to carriers' claims, afford the carriers an advantage over the Government, insofar as recovery periods are concerned, if deductions by the Government for overcharges were limited to 3 years after payment.

"In order to maintain an equality of position insofar as the Government and the carriers are concerned, it appears desirable that a further proviso be added to section 322 as proposed to be amended in S. 377, so as to remove transportation transactions covered by section 22 from the scope of the 10-year limitation specified in title 31, United States Code, section 71a. To this end it is recommended that the following language be added to section 322, as proposed to be amended.

" 'Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within 3 years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation.' "

The Comptroller General's request seems to be a reasonable one. It should be adopted.

Mr. SMATHERS. Mr. President, I ask unanimous consent to have printed at this point in the RECORD another statement relating to S. 377.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT ON S. 377

The purpose of the bill as introduced is to amend section 22 of the Interstate Commerce Act under which the United States is allowed free or reduced rates for carriage, storage, or handling of property, and the transportation of persons or property at free or reduced rates. The bill proposes to provide that offers, or tenders, to the Government under section 22 by carriers subject to the Interstate Commerce Act shall be conclusively presumed to be lawful and not subject to attack 2 years after date of acceptance by a properly authorized official of the United States.

It should be noted that S. 377 provides that the 2-year period of limitations on contracts under section 22 of the Interstate Commerce Act begins to run, not upon delivery, or tender of delivery by the carrier, as in the case of commercial shipments, nor upon payment for transportation performed, but when the contract is "accepted or agreed to" by properly authorized Government officials. Thus, such a contract under the terms of the bill might be "accepted or agreed to," depending upon the exact meaning of those words, and 2 years or more might pass before traffic actually moves under the terms of such an agreement. Therefore, even before the Government makes use of the rates, fares, and charges provided by such a contract, the Government could already be bound to accept the terms as "conclusively presumed to be just, reasonable, and otherwise lawful" and not "subject to attack, or reparation" except upon grounds of fraud or clerical mistake. Under the act, commercial shippers may transport goods under published tariff rates for an indefinite period before appealing these rates to the ICC. The only limitation on the shipper's rights is that his recovery is limited to damages for 2 years preceding the appeal.

The President vetoed a similar finality bill, S. 906, 83d Congress. His memorandum of disapproval stated he could see no reason why the Government should not be subject to the same 2-year limitation on retroactive review of its freight charges as the commercial shipper. He recommended that such legislation be enacted.

The committee examined the situation thoroughly and found that by the weight of authority the Government is apparently bound by a 2-year statute of limitations, while the carriers seeking to recover from the Government are subject to the 6-year period established for the Court of Claims.

In the interest of fairness to all concerned, the committee believes that a 2-year statute of limitations, now applicable to commercial shippers, should be applied to shipments and transportation of persons by the Government. Likewise, it believes that carriers subject to the act should be clearly bound by the same 2-year period of limitations rather than the 6-year period now available to the carriers for suits against the Government. S. 377 was amended to so provide.

The committee during its consideration of S. 377 dealt with another matter that has, over the years, been a subject of great dissatisfaction, and often of injustice, to carriers dealing with the Government: The right of the Government to withhold funds because of payments deemed to be in excess of those legally applicable.

The present law provides that payment for transportation of United States mail and passengers and property by or on behalf of the United States by common carriers subject both to the Interstate Commerce Act and the Civil Aeronautics Act of 1938 shall be made upon presentation of bills for the service and prior to audit by the General Accounting Office, but the right is reserved to the United States to deduct the amount of any overpayment to a carrier from any amount subsequently found to be due the carrier.

The right of the Government to deduct for overpayment is not limited as to time; the committee believes that a reasonable time limitation should be established for such deductions. It seems unfair that the carriers subject to this provision should be subject to deductions for as many years as meets the convenience of the Government. Therefore, the period should be made certain.

The committee believes, accordingly, that deductions for excess payments should be made within a period of 3 years beginning with the date of payment to a carrier. S. 377 was further amended to provide for such a period.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment."

DEVELOPMENT OF NATIONAL SYSTEM OF NAVIGATION AND TRAFFIC CONTROL FACILITIES

The MAGNUSON. Mr. President, I ask that the Chair lay before the Senate the amendment of the House of Representatives to S. 1856.

The PRESIDING OFFICER (Mr. BEALL in the chair) laid before the Senate the amendment of the House of Representatives to the bill (S. 1856) to provide for the development and modernization of the national system of navigation and traffic control facilities to serve present and future needs of civil and military aviation, and for other purposes, which was, on page 7, line 11, strike out all after "personnel," down through and including "or" in line 13.

Mr. MAGNUSON. Mr. President, I move that the Senate concur in the amendment of the House.

Mr. BRICKER. Mr. President, I think this is one of the most constructive and most important pieces of proposed legislation which has come before the Senate from the Committee on Interstate and Foreign Commerce in quite awhile. I concur in the motion of the Senator from Washington, the chairman of the committee. I am quite sure that funds will be available. We were given that assurance by the administration.

In passing, I wish to commend the work which was done by General Curtis and subsequently by General Quesada in helping to work out a program.

I think this is a very constructive and urgently needed bill.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

Mr. MAGNUSON. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an excerpt

S. 377

AN ACT

85TH CONGRESS
1ST SESSION

S. 377

IN THE HOUSE OF REPRESENTATIVES

AUGUST 9, 1957

Referred to the Committee on Interstate and Foreign Commerce

AN ACT

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or

upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of

property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for on on behalf of the United States in connection with

any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation."

SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date

of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

Passed the Senate August 8 (legislative day, July 8), 1957.

Attest: FELTON M. JOHNSTON,

Secretary.

85TH CONGRESS
1ST SESSION

S. 377

AN ACT

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

AUGUST 9, 1957

Referred to the Committee on Interstate and Foreign Commerce

5. TAXES. Began debate on H. R. 12695, the tax rate extension bill, with discussion of the economic situation. pp. 10447-79

6. WATERSHEDS. The Agriculture and Forestry Committee approved watershed projects at Canoe Creek, Ky., and Wild Rice Creek, N. D. and S. D. p. D558

7. TRANSPORTATION. Sen. Neuberger inserted an article, "Outside Chance Seen for Halting Federal Transportation Excises." pp. 10445-6

Sen. Smathers inserted a statement by the American Trucking Ass'n asserting that the highway users were paying more than their fair share for the construction of highways. pp. 10480-3

8. STATEHOOD. Sen. Church inserted an editorial urging statehood for Alaska. p. 10479

9. TEXTILES. Sen. Thurmond urged quota limitations on the importation of types of textile goods from abroad. pp. 10479-80

10. VEGETABLES. Sen. Yarborough commended the 1959 Senate salad, which included shrimp, escarole, and green onions from Texas, and concluded that "Texas farmers and fishermen produce virtually every ingredient for delicious salad." p. 10483

11. PERSONNEL ETHICS. Sen. Morse inserted an editorial, "On Setting An Example," and discussed the ethics of the administration. pp. 10483-5

12. RECLAMATION. Both Houses received from the Interior Department notice that an adequate soil survey and land classification had been made of the Crooked River project, Ore., and that these lands may be irrigated. pp. 10429, 10536

Both Houses received reports from the Interior Department of two project proposals under the Small Reclamation Projects Act of 1956, in Georgetown, Calif., and East Nicolaus, Calif. pp. 10429, 10536

HOUSE

13. PERSONNEL. A subcommittee of the Post Office and Civil Service Committee ordered reported with amendment S. 385, to authorize the training of Federal employees at public or private facilities. p. D561

14. TRANSPORTATION. The Interstate and Foreign Commerce Committee reported with amendment H. R. 12832, to amend the Interstate Commerce Act so as to strengthen and improve the national transportation system (H. Rept. 1922). p. 10537

A subcommittee of the Interstate and Foreign Commerce Committee ordered reported with amendment H. R. 8742, to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government. p. D561

15. FEDERAL-STATE RELATIONS. The Rules Committee reported a resolution for consideration of H. R. 3, to establish rules of interpretation governing questions of the effect of acts of Congress on State laws. p. 10537

16. SURPLUS PROPERTY. The Government Operations Committee reported with amendment S. 2752, to modify procedures for submitting proposed surplus property disposals to the Attorney General (H. Rept. 1920). p. 10537

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued June 19, 1958
For actions of June 18, 1958
85th-2d, No. 100

CONTENTS

HIGHLIGHTS: Senate committee reported bills to authorize study of humane slaughter methods; extend special livestock loan authority; and reduce allotments for 2nd crop of tobacco grown on allotment in one year. House subcommittee ordered reported bill to authorize training for Federal employees at outside facilities. Conferees agreed to file report on mutual security authorization bill.

SENATE

1. HUMANE SLAUGHTER. The Agriculture and Forestry Committee reported with amendments H. R. 8308, to require the use of humane methods of slaughter of livestock and poultry (S. Rept. 1724) (p. 10429-30). The Daily Digest reported that the substitute amendment would provide for a study of this subject by the Department and a report to Congress on its finding within 2 years (pp. D557-8).

2. LIVESTOCK LOANS. The Agriculture and Forestry Committee reported with amendment H. R. 11424, to extend for 2 years (through July 14, 1961) certain authority of the Secretary for special livestock loans (S. Rept. 1723). p. 10429

3. TOBACCO. The Agriculture and Forestry Committee reported without amendment H. R. 11058, to reduce the acreage allotments of tobacco farmers who harvest more than one crop of tobacco in a year from the same acreage (S. Rept. 1725). p. 10430

4. SURPLUS FOODS. The Agriculture and Forestry Committee reported without amendment H. R. 12164, to permit the donation of surplus foods to nonprofit summer camps for children without reference to the number of needy children (S. Rept. 1726). p. 10430

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued July 30, 1958
For actions of July 29, 1958
85th-2d, No. 128

CONTENTS

HIGHLIGHTS: Senate passed: Industrial uses research bill. Humane slaughter bill. House passed Klamath Indian lands bill.

HOUSE

1. FORESTRY. Passed under suspension of the rules S. 3051, to provide for either private or Federal acquisition of that part of the Klamath Indian forest lands which must be sold. Rep. Aspinall stated that the bill was amended to delete the provision for harvesting timber on a sustained-yield basis. pp. 14148-52

   The Agriculture Committee reported with amendment H. R. 12494, to authorize the Secretary in selling certain lands in N. C. to permit the State to sell or exchange such lands for private purposes (H. Rept. 2296). p. 14182

2. WHEAT IMPORTS. The Agriculture Committee reported with amendment H. R. 11581, to increase the import duty on wheat for seeding purposes which has been treated with poisonous substances and is unfit for human consumption (H. Rept. 2295). p. 14182

3. CHEMICAL ADDITIVES. The Rules Committee reported a rule for consideration of H. R. 9521, to amend the Federal Food, Drug, and Cosmetic Act so as to revise the definition of the term "chemical additive" to provide that it shall not include any pesticide chemicals when used in or on any raw agricultural commodity which is produced from the soil. p. 14182

4. RECLAMATION. The Interior and Insular Affairs Committee reported without amendment S. 4002, to authorize the Gray Dam and Reservoir as a part of the Glendo Unit of the Missouri River Basin project (H. Rept. 2291). p. 14182

5. TRANSPORTATION; TRAVEL. The Interstate and Foreign Commerce Committee ordered reported with amendment H. R. 8742, to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government. p. D755

6. ONIONS; COMMODITY EXCHANGES. Reps. Poage and Hoeven were excused as conferees on H. R. 376, to prohibit trading in onion futures, and Reps. Thompson, Tex., and Simpson, Ill., were appointed in their places. p. 14124

7. APPROPRIATIONS. Passed without amendment H. J. Res. 672, to authorize temporary appropriations until August 31, 1958, to various agencies until their regular 1959 appropriation bills are enacted. The resolution had been reported earlier by the Appropriations Committee (H. Rept. 2298). pp. 14124-25, 14182

8. SCHOOL AID. Agreed to the Senate amendments to H. R. 11378, to make permanent the programs providing financial assistance in the construction and operation of schools in areas affected by Federal activities, insofar as such programs relate to children of persons who reside and work on Federal property, and to extend such programs until June 30, 1961, insofar as such programs relate to other children. This bill will now be sent to the President. p. 14132

9. MINERALS. Passed under suspension of the rules S. 3817, to authorize the Secretary of the Interior to make loans for the development of mineral resources in the U. S. pp. 14146-47

10. PERSONNEL. Passed under suspension of the rules S. 25, to specify the effective date upon which changes in pay of wage-board employees shall begin following the start of a survey. pp. 14171-73

11. WATERSHEDS. Received from the Agriculture Committee letters stating that the following watershed projects had been approved by the Committee: Mill Creek, Ga.; Obion Creek, Ky.; Muddy Creek, Miss. and Tenn.; Adobe Creek, Buena Vista Creek, and Central Sonoma, Calif.; Upper Nanticoke River, Del.; Donaldson Creek, Ky.; Mud Creek, Nebr.; Peavine Mountain, Nev.; Indian Creek, Tenn. and Miss.; and Coon Creek, Wisc.; to Appropriations Committee. pp. 14174, 14181

12. CIVIL DEFENSE. Rep. Holifield commended the request of the Office of Defense and Civilian Mobilization for funds to carry out the Federal shelter construction program. pp. 14175-76

13. TRANSPORTATION. The Rules Committee reported a resolution for consideration of H. R. 12751, to extend the provisions of the Shipping Act of 1916 relating to dual rate contract arrangements. p. 14182

SENATE

14. RESEARCH. Passed, 81 to 0, with amendments S. 4100, to provide for the increased use of agricultural products for industrial purposes through the establishment of an Agricultural Research and Industrial Administration, under the general supervision and direction of the Secretary of Agriculture, to coordinate and direct such research and development projects. pp. 14042-5

ITEMS IN APPENDIX

28. FORESTRY; MINERALS. Extension of remarks of Sen. Neuberger discussing progress being made under Public Law 167, 84th Cong., the Multiple Surface Use Act and inserting 2 articles reporting on a test case. p. A6902

29. SMALL BUSINESS. Sen. Sparkman inserted an article, "Aid for Small Business," which "highlights three separate moves on the small-business front." p. A6906

30. ALASKA. Del. Bartlett inserted a speech describing the land situation in Alaska. pp. 6910-2

31. EXPENDITURES. Sen. Thurmond stated that "one of the greatest threats to the security of this Nation lies in the danger that the Federal Government will spend itself into a state of collapse," and inserted an article on this subject. p. A6915

32. ST. LAWRENCE SEAWAY. Rep. Dorn inserted two editorials describing the effect of the opening of the seaway on the port of New York. pp. A6923-4, A6927-8

33. SOCIAL SECURITY. Speech in the House by Rep. Dooley favoring H. R. 13459, to increase certain benefits under the Social Security Act. pp. A6928-9

BILLS INTRODUCED

34. ETHICS. S. 4223, by Sen. Case, to promote public confidence in the integrity of Congress and the executive branch; to Rules and Administration Committee. Remarks of author. p. 14496-8

35. MONOPOLIES. S. 4224, by Sen. Long, to require the filing of evidentiary briefs by the United States in connection with the entry of consent decrees, judgments, and orders in civil antitrust actions; to Judiciary Committee.

BILLS APPROVED BY THE PRESIDENT

36. FORESTRY. H. R. 12161, which authorizes the Secretary, upon the request of local governments, to designate areas (not to exceed 640 acres) of national-forest land, or land administered by him under Title III of the Bankhead-Jones Farm Tenant Act, as townsites. Authorizes him to divide such areas into town lots to be offered at public sale to the highest bidder for not less than appraised value. Provides that lots offered at a public sale for which there is no satisfactory bid may be disposed of at private sale for not less than the appraised value; persons occupying such lands on which improvements have been constructed by him or his predecessor shall be given the opportunity to purchase the offered lands at appraised value; and no more than three town lots may be sold to any person or private corporation, firm, or agency. Approved July 31, 1958 (Public Law 85-569, 85th Congress).

37. FOOT-AND-MOUTH DISEASE RESEARCH. S. 3076, authorizes the carrying or shipment of foot-and-mouth disease virus under adequate safeguards of packaging and handling across the U. S. mainland either to or from the Plum Island laboratory. Approved July 31, 1958 (Public Law 85-573, 85th Congress).

38. APPROPRIATIONS. H. J. Res. 672, which makes temporary appropriations until August 31, 1958, to various agencies until their regular 1959 appropriation bills are enacted. Approved July 31, 1958 (Public Law 85-572, 85th Congress).

16. PUBLIC DEBT. The Ways and Means Committee reported without amendment H. R. 13580, to increase the public debt limit to $285 billion (H. Rept. 2353). p. 14542

17. TRANSPORTATION. The Interstate and Foreign Commerce Committee reported with amendment H. R. 8742, to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government (H. Rept. 2346). p. 14542

18. MINERAL LANDS. The Interior and Insular Affairs Committee reported without amendment S. 2517, to authorize the States to choose mineral lands in making selections in lieu of sections of public lands occupied before State claims were made (H. Rept. 2347). p. 14542

19. ELECTRIFICATION. The Public Works Committee reported without amendment S. 1069, to provide TVA with the authority to issue bonds to finance the construction of new generating capacity (H. Rept. 2350). p. 14542

20. RADIO FREQUENCIES. The Interstate and Foreign Commerce Committee was granted permission until midnight Sat., to file a report on S. J. Res. 106, to establish a commission to investigate the utilization of the radio and television frequencies allocated to agencies and instrumentalities of the Federal Government. p. 14540

21. IMPORTS. Received the conference report on H. R. 6006, to provide for greater certainty, speed, and efficiency in the enforcement of the Antidumping Act (H. Rept. 2352). pp. 14539-40, 14542

22. HOUSING. The Banking and Currency Committee was granted permission until midnight Sat., to file a report on S. 4035, the omnibus housing bill. p. 14520

23. FARM AID. Rep. Judd inserted the results of a questionnaire he had sent to his constituents relating to aid to farmers, foreign aid, balanced budget, etc. pp. 14531-34

24. FOREIGN TRADE. Received from the State Department a report on foreign trade and a supplement, "Statistical Review of East-West Trade 1956-57." p. 14541

25. ACCOUNTING. Received from the Treasury a report of the Bureau of Accounts covering restoration of balances withdrawn from appropriation and fund accounts under the control of Treasury. p. 14541

26. LEGISLATIVE PROGRAM. Rep. McCormack announced the following legislative program: Mon., Aug. 4: Consent Calendar and the following bills to be considered under suspension of the rules: S. 4071, the farm bill, H. R. 8382, the freight forwarder bill, H. R. 474, coordination of forwarding and servicing of water-borne export and import foreign commerce, H. R. 11056, import restrictions on fruits and nuts, and S. J. Res. 106, investigation of radio and television frequencies; Tues. : H. R. 13580, increase in public debt limit, if a rule is granted; Wed., and remainder of week, if rules are granted, S. 4035, the housing bill, S. 3683, the area redevelopment bill, and H. R. 13247, the education bill. He also stated that he did not know whether or not H. R. 9521, relating to use of chemical preservatives on food, would be considered this session since it was a controversial bill.

27. ADJOURNED until Mon., Aug. 4. p. 14541

85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2346

AMENDING THE INTERSTATE COMMERCE ACT RELATING TO THE STATUTE OF LIMITATIONS ON ACTIONS INVOLVING TRANSPORTATION OF PROPERTY OR PASSENGERS FOR OR ON BEHALF OF THE UNITED STATES GOVERNMENT

AUGUST 1, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. FLYNT, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany H. R. 8742]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 8742) to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is as follows:

Strike out all after the enacting clause and insert the following:

That the Interstate Commerce Act, as amended, is amended as follows:

(1) Amend section 16 (3) as follows: In subparagraph (a) strike out "two years" and insert "three years"; in subparagraph (c) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in subparagraph (d) strike out the word "two-year" the second time it occurs and insert "three-year".

(2) Add the following new subparagraph (i) to section 16 (3):

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(3) Amend section 204a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert

"three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

(4) Add the following new paragraph (7) to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(5) Amend section 308 (f) (1) as follows: In subparagraph (A) strike out "two years" and insert "three years"; in subparagraph (C) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in subparagraph (D) strike out the word "two-year" the second time it occurs and insert "three-year".

(6) Add the following new subparagraph (5) to section 308 (f):

"(5) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(7) Amend section 406a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

(8) Add the following new paragraph (7) to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the words "overpayment to" and substituting therefor the words "overcharges by".

(2) By adding a new sentence at the end of the section as follows:

"The term 'overcharges' shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fare, and charges established pursuant to section 22 of the Interstate Commerce Act: *Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

SEC. 3. The provisions of this Act which amend the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provision of this Act which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

The committee has also amended the title of the bill to conform to the provisions of the substitute amendment to the text of the bill. The amendment to the title of the bill is as follows:

A bill to amend the Interstate Commerce Act and the Transportation Act of 1940, with respect to periods of limitation applicable to actions or claims, including those by or against the United States, for recovery of charges for the transportation of persons or property, and for other purposes.

PURPOSE OF BILL

The purpose of the bill is to amend the Interstate Commerce Act to provide a uniform statute of limitations on actions involving transportation of property and passengers applicable to the United States Government as well as to other shippers.

In the President's Memorandum of Disapproval of S. 906 (applying to the finality of rates negotiated under sec. 22) dated September 2, 1954, he stated:

> I see no reason why the Government should not be subject to the same limitations on retroactive review of its freight charges as the commercial shipper. That result could be accomplished equitably by an amendment to section 16 (3) of the Interstate Commerce Act specifying that the Government shall be subject to the 2-year limitation presently applicable to commercial shippers. The Government would then be on exactly the same basis under that section as all other shippers, and existing inequities in the present rate-making relationships between the Government and the common carriers would be removed. I recommend that such legislation be enacted at the next session of the Congress.

The proposed amendment for uniformity in the limitations on these actions is needed in view of the state of the law and the inequities that exist under the present unequal periods of limitation under the Interstate Commerce Act and the Transportation Act of 1940 and the need to prevent undue and unreasonable delays in the submission of controversies to the Interstate Commerce Commission or the courts which involve disputes between the Government and the carriers arising under the Interstate Commerce Act.

The enactment into law of the legislation proposed would involve no expenditure of Federal funds.

HEARINGS

Hearings were held on H. R. 8742 and identical bill, H. R. 8743, and on a companion bill, S. 377, by the Subcommittee on Transportation and Communications. The major objectives of the bill are supported by the Interstate Commerce Commission, the Association of American Railroads, American Trucking Associations, the Department of Defense, the General Services Administration, the General Accounting Office, and the Bureau of the Budget. There was some objection for practical reasons by the General Accounting Office to placing the limitation as low as 2 years and to certain suggested amendments to the bill insofar as they related to the proposed amendment to section 322 of the Transportation Act of 1940. The bill as amended by the committee presents what is felt to be a workable solution to the problems confronting the General Accounting Office

in its postaudit of transportation charges and a practical compromise of the various proposals presented for achieving the desired uniformity in the limitations on actions concerned.

PRESENT SITUATION

Private shipments

Under section 16 and comparable sections in parts II, III, and IV of the Interstate Commerce Act, all actions at law *by carriers* for recovery of charges must be begun within 2 years from the time the cause of action accrues.

All actions at law *by shippers* must be begun, or complaint *by shippers* for recovery of overcharges must be filed with the Interstate Commerce Commission within 2 years from the time the cause of action accrues. "Overcharges" are defined as charges for transportation service in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

In both cases the cause of action accrues upon delivery or tender of delivery of the shipment by the carriers.

Government shipments

Carriers may bring actions in the Court of Claims for recovery of charges within 6 years, and may file claims with the General Accounting Office within 10 years.

The position of the *Government* in filing claims for overcharges with the Commission is unclear, the Commission contending the Government is bound by the 2-year rule, and the Government contending it is not. This is not too important, however, as the bulk of the Government's recovery of overpayment is handled by administrative deductions permitted by section 322 of the Transportation Act of 1940. That section requires that payment for transportation on behalf of the United States by any carrier subject to the Interstate Commerce Act and the Civil Aeronautics Act shall be made upon presentation of bills prior to audit or settlement by the General Accounting Office but that the right is reserved to the Government to deduct the amount of any overpayment to any carrier from any amount subsequently found to be due such carrier. No time limitation is expressed, and it appears the General Accounting Office has gone back many years in making such deductions, especially in its re-audit of World War II disbursements.

Reparations

A *private shipper* claiming a rate is unreasonable must first pay the published tariff rate (which is due generally within 4 days after presentation by rail carriers and 2 weeks by motor carriers) and then have recourse to a Commission proceeding under section 13 to collect reparations, which must be instituted within 2 years of the time the cause of action accrues.

On *Government shipments*, the General Accounting Office has the same route open to it for recovery of reparations. The Office, itself, apparently has not used this route in cases against rail carriers, though it has to some extent against motor carriers.

The General Accounting Office, however, has used the deduction procedure to recover amounts in excess of what it determines to be reasonable. Where it has—

found that charges have been asserted and paid to a carrier on the basis of a tariff rate, though duly published and filed with the Interstate Commerce Commission, which the Commission has declared in a comparable situation to be prima facie unlawful as being in violation of some provision of the Interstate Commerce Act—

it has treated this as an overpayment within section 322 of the Transportation Act. It appears the General Accounting Office has made deductions for this type of overpayment on published rates as against both rail and motor carriers, and on section 22 negotiated rates against motor carriers. On section 22 rail rates there have been discussions over application and interpretation but not on their reasonableness except for mutual resolutions where the section 22 rate may have been above a published rate.

COMMITTEE AMENDMENT

Section 1

Amends sections 16 (3), 204a, 308 (f), and 406a of the Interstate Commerce Act to provide a uniform period for the recovery of overcharges and undercharges on both private and Government shipments. This is upped from 2 to 3 years for the private shipper; reduced to 3 years for the Government; upped from 2 to 3 years for the carrier as against the private shipper, and reduced from 6 to 3 years for the carrier as against the Government.

In view of the payment before audit requirement on Government shipments, the amendment also defines the cause of action as accruing on this type of transportation upon (*a*) payment of charges for the transportation involved, or (*b*) subsequent refund for overpayment of such charges, or (*c*) deduction made under section 322, whichever is later.

Section 2

Amends section 322 of the Transportation Act—

(*a*) To put a limitation of 3 years (not including any time of war) on the period during which the General Accounting Office may make deductions;

(*b*) To require the carrier to file claims with the General Accounting Office within 2 years (not including time of war); and

(*c*) To substitute "overcharge" for "overpayment" and to define "overcharge" as charges in excess of published tariffs on file with the Interstate Commerce Commission and the Civil Aeronautics Board or rates, fares, and charges negotiated under section 22 of the Interstate Commerce Act.

This amendment puts a limit of 3 years on the time the General Accounting Office may make deductions; reduces from 10 to 3 years the time a carrier may file a claim with the General Accounting Office; and, owing to the redefinition of "overpayment," precludes the General Accounting Office from deducting amounts resulting from any unilateral determination that applicable rates are unreasonable (though leaving it free to seek reparations other shippers do, before the Commission).

Section 3

Provides that section 1 shall apply to causes of action accruing after effective date of the act, and that section 2 shall apply only to trans-

portation performed and payment made therefor subsequent to effective date of the act.

LETTERS FROM AGENCIES

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D. C., November 27, 1957.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR CHAIRMAN HARRIS: Your letter of July 18, 1957, addressed to the chairman of the Commission and requesting a report and comments on a bill, H. R. 8742, introduced by Congressman Flynt, to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

H. R. 8742 would amend section 16 (3) of part I of the Interstate Commerce Act, which applies principally to railroads, and section 240a of part II, section 308 (f) of part III, and section 406a of part IV, which are applicable to motor carriers, water carriers, and freight forwarders, respectively, so as to provide specifically that the 2-year statutory period of limitation on actions for the recovery of charges, damages, or overcharges shall apply to shipments involving the United States Government and the carriers in substantially the same fashion it now applies to commercial shippers and the carriers.

In a number of complaints filed with the Commission by the Government seeking damages against railroads for the transportation of property at rates and charges alleged to be in violation of the Interstate Commerce Act, the Government has contended that the 2-year period of limitations does not apply to complaints brought by the United States. The Commission, however, has taken the position that the statutory period does apply to such actions and has dismissed complaints when the cause of action accrued more than 2 years prior to the date the complaint was filed. H. R. 8742 would settle this question by specifically providing that the limitation shall apply to complaints filed with the Commission by the Government as well as to complaints filed by other shippers.

With respect to the question of when the cause of action shall be deemed to accrue, the bill would amend sections 16 (3) (e), 204a (4), 308 (f) (2), and 406a (4), by adding a provision, limited to actions at law by carriers against the Government and to complaints or actions at law filed by the Government against carriers that such cause shall be deemed to accrue upon "the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later." This differs from the provisions governing actions at law by carriers against commercial shippers, or complaints filed with the Commission or actions at law instituted against carriers by commercial shippers,

in which the cause of action is deemed to accrue upon delivery or tender of delivery of the shipment by the carrier, and not after.

This difference in treatment appears necessary, since the Government is required, under section 322 of the Transportation Act of 1940 (49 U. S. C., sec. 66), to pay transportation charges of common carriers upon presentation of bills therefor prior to audit by the General Accounting Office. However, the right is reserved to the Government "to deduct the amount of any overpayment to any such carrier [a common carrier subject to the Interstate Commerce Act] from any amount subsequently found to be due such carrier," but the right to make such deduction is not limited as to time. H. R. 8742 would amend section 322 in this connection by requiring the Government to exercise such right within 3 years from the time of payment of the bills. This appears to be a reasonable limitation and would bring the right more nearly in line with commercial practice. Moreover, it hardly seems fair that the carriers should be subject, as at present, to deductions for as many years as suits the convenience of the Government. It is noted in this connection that no exception is made to this limitation during time of war as provided in S. 377 (as passed by the Senate on August 8, 1957), which is also pending before your committee. It is further noted that no provision is made, as in the Senate-passed bill, to make the same 3-year period of limitation applicable to claims "cognizable by the General Accounting Office" for charges for transportation within the purview of section 322. This appears to be a reasonable requirement, since it would subject the Government and the carriers to the same period of limitation. The committee may, therefore, wish to consider such an amendment to H. R. 8742.

In addition, the bill would change the word "overpayment" in section 322 to mean "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act. "In section 16 (3) (g) of the Interstate Commerce Act and in the corresponding sections of the other parts of the act, the term "overcharges" is defined as meaning "charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission," except that the word "transportation" is omitted in section 406a (5) of part IV. This substitution would make it clear that while the Government may deduct from current accounts with a carrier amounts claimed to have been paid in excess of the applicable tariff rate, it may not deduct amounts resulting from the charging of rates alleged by the Government to be unreasonable or unduly prejudicial or otherwise unlawful, although applicable because specified in the tariffs.

In our opinion, the provisions of H. R. 8742 are desirable to prevent undue and unreasonable delays in the submission of controversies to the Commission or the courts which involve disputes between the Government and the carriers arising under the Interstate Commerce Act. We therefore recommend its enactment.

Editorially, it appears that the section reference "406 (a) (4)" in line 14, page 3, of the bill should be changed to "406a (4)." It also appears that the words "or passengers" in lines 16 and 24, page 3, should be deleted, since freight forwarders perform no passenger services. Also, in our opinion, the amendatory language in section 9

(1) of the bill would be improved by substituting the words "or any" for "and" in line 7, page 4. It further appears that the period after "Act" in line 9, page 4, should be outside, rather than within, the quotation marks.

Respectfully submitted.

OWEN CLARKE, *Chairman,*
ANTHONY ARPAIA,
ROBERT W. MINOR,
Committee on Legislation.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., April 29, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letters of July 18 and August 13, 1957, requesting the views of the Bureau of the Budget on H. R. 8742 and S. 377, similar bills to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for over-charges by the United States shall be made within 3 years from time of payment.

The objective of this proposed legislation conforms to the President's desire, expressed in his memorandum of disapproval of S. 906, 83d Congress, that the Government should be subject to limitations upon retroactive review of its freight charges equivalent to those imposed upon commercial shippers. Sections 1 through 8 of H. R. 8742 and S. 377 incorporate provisions of draft bills submitted by the Department of Defense and the General Services Administration for consideration of the Senate Committee on Interstate and Foreign Commerce. These sections would impose a 2-year limitation upon the submission of controversies to the Interstate Commerce Commission or the courts arising between the Government and carriers under the Interstate Commerce Act and accruing from the date of payment or subsequent collection of overcharges.

Section 9, not a part of the above draft bills, would redefine the types of Government payments for which an administrative collection of overcharges may be made upon audit under the provisions of the Transportation Act of 1940, and would limit the period during which authorized administrative deductions may be made to 3 years from the time of payment of bills.

In order to make the limitations proposed in sections 1 through 8 fully effective, some appropriate limitation upon the period which deductions may be made to carriers' accounts following audit, such as is included in section 9 (2) appears desirable. As presently worded, section 9 (1) would preclude recovery by administrative action of overpayments resulting from clerical error by the Government or overpayments from any cause which have been made to air carriers. These effects would appear to be clearly undesirable. In addition, enactment of the section would have the effect of shifting the burden of initiation of litigation or rates, the lawfulness of which are in dispute, from the carriers to the Government. It is believed that this provision will increase administrative expenses and increase the vol-

ume of litigation. Your committee may, therefore, wish to examine with particular care the need for making this change in existing procedures.

S. 377 and H. R. 8742 are distinguished by certain technical differences appearing in section 9 relating to the suspension of the period of limitation during time of war and to the presentation of claims by carriers which are cognizable by the General Accounting Office. It is believed that if legislation is enacted, that provisions relating to these matters similar to those presently incorporated in S. 377 should be included. It is suggested that the wartime suspension might more appropriately be invoked during any period of emergency declared by the President.

Subject to the above reservations, the Bureau of the Budget recommends enactment of this legislation.

Sincerely yours,

PHILLIP S. HUGHES,
Acting Assistant Director for Legislative Reference.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 2, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 8742, 85th Congress, a bill to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The purpose of H. R. 8742 is to insert a provision in section 16 (3) of part I of the Interstate Commerce Act and in related provisions of parts II, III, and IV of that act specifying that the stated 2-year limitation applies to Government traffic. The present 6-year provision now applicable to suits by carriers against the Government would thereby be reduced to 2 years. In addition the period for action by the Government to obtain review of rates charged it, now contended to be unlimited in pending litigation, would be fixed at 2 years from the date of the accrual of the cause of action. Section 9 of this bill would amend section 322 of the Transportation Act of 1940 to provide that deductions for overcharges by the United States shall be made within 3 years from the time of payment of bills wherein overcharges are noted.

H. R. 8742 is identical to H. R. 8743 and substantially similar to S. 377, as amended and passed by the Senate on August 8, 1957. Sections 1 through 8 of these bills are in practical effect an adoption of the draft bill proposed by the Department of Defense as a substitute for S. 377 in its original form and section (b) of H. R. 3233, 85th Congress. The Department of Defense opposed enactment of

S. 377, as introduced in the Senate and section (b) of H. R. 3233 because such legislation would place the Government in a position inferior to that now enjoyed by commercial shippers who may question the reasonableness of published rates at any time following publication. The only limitation on the appeal by commercial shippers is that recovery is limited to the 2-year period preceding the filing of the action. S. 377 in its original form and section (b) of H. R. 3233 were similar to S. 906, 83d Congress, which passed both Houses of Congress but was vetoed by the President on September 2, 1954, for substantially these same reasons. In withholding his approval the President stated, "I see no reason why the Government should not be subject to the same limitations on retroactive review of its freight charges as a commercial shipper. That result could be accomplished equitably by an amendment to section 16 (3) of the Interstate Commerce Act specifying that the Government shall be subject to the 2-year limitation presently applicable to commercial shippers * * * I recommend that such legislation be enacted at the next session of the Congress."

Paragraph (1) of section 9, of H. R. 8742, would substitute other language for the word "overpayment" in section 322 of the Transportation Act of 1940. This change would have two effects adverse to the Government. First, the new language reserves the right to deduction of overcharges with respect to carriers subject only to the Interstate Commerce Act, thus abandoning such reservation with respect to air carriers subject to the Civil Aeronautics Act. Second, since "overpayment" is broader than "overcharge" because it includes errors of the payer as well as the receiver of money, the new language would technically, and unjustly, fail to reserve the right to make deductions where mathematical or administrative errors have been made in the disbursing office. It is understood that other objections to both paragraph (1) and paragraph (2) of section 9 have been expressed, relating to matters which primarily concern the General Accounting Office and the Department of Justice.

Subject to the exception indicated in the preceding paragraph, the Department of the Army, on behalf of the Department of Defense, supports enactment of H. R. 8742.

The fiscal effects of this bill cannot be estimated.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the Congress.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C., April 30, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Your letter of July 18, 1957, requests comments from GSA concerning H. R. 8742, a bill to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the

United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment.

The provisions of this bill are comparable to an alternative proposal submitted by GSA in commenting on H. R. 3233, also pending at this time. However, H. R. 8742 proposes an additional provision which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66), having the effect of restricting the present unlimited period for making deductions of overcharges to a 3-year period. The latter provision is of primary concern to the General Accounting Office, and it is assumed comments will be obtained from the Comptroller General.

It would appear from our examination that the enactment of this bill would not involve increased costs to civilian executive agencies.

GSA supports the objectives of H. R. 8742, and favors the enactment of legislation of this nature subject to the foregoing comments.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN FLOETE, *Administrator.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 28, 1958.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: On August 20, 1957, we furnished a report on S. 377 as passed by the Senate on August 8, 1957, and on April 30, 1958, our General Counsel, Edwin L. Fisher, accompanied by J. A. McDonnell, associate director of our transportation division, testified before the Subcommittee on Transportation and Communications, on H. R. 8742, H. R. 8743, and S. 377. The three bills contain proposals to provide a 2-year statute of limitations on actions involving the transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from the time of payment. We recently received for consideration and comment a revised proposed draft of amendments to H. R. 8742.

The present draft generally would amend section 16 (3) and comparable sections of the Interstate Commerce Act so as to provide a 3-year statute of limitations on actions before the Interstate Commerce Commission or the courts, and would also amend section 322 of the Transportation Act of 1940. We have previously reported that a 2-year period of limitations was too short a time for action to properly protect the Government's interest, but if a limitation was to be applied, it should be no less than 3 years. We do not have any reason to comment on the form of statement contained in sections 1 through 8 of the revised draft, since it appears reasonably calculated to accomplish the purpose sought to be achieved by the sponsors of the proposed amendments.

However, as we have reported and as our General Counsel testified on April 30, 1958, we are opposed to the adoption of any proposal which changes the word "overpayment" in section 322 of the Transportation Act of 1940 (49 U. S. C. 66) to "overcharge." The present

draft, we believe, is subject to stronger objection than the substitution of the word "overcharge" for the word "overpayment," in that it would (in sec. 9) retain section 322 in its present form and then specifically define the word "overpayment" in terms which correspond, exactly, in the part here significant, to the definition of the word "overcharge" in section 16 (3) (g) and comparable provisions of the Interstate Commerce Act.

We have consistently, in our audit before and after the enactment of section 322 in 1940, adjusted transportation charges, in appropriate instances, to a basis found reasonable by the Interstate Commerce Commission in proceedings involving facts and circumstances comparable to those in the transactions found in our audit to require such adjustment. That action is believed to be in harmony with the application of the provisions of section 322 which now include the word "overpayment," and our failure to so act would result in a dereliction of our duty under the law. Recognition of our authority for recovering by setoff (rather than by filing anticipatory suits) charges in excess of those believed to be reasonable, is reflected in the case of the *United States* v. *Western Pacific R. Co.* (352 U. S. 59).

If section 322 must be changed so as to restrict the deduction of overpayments to those which are in excess of the applicable rates under the tariffs lawfully on file, etc., there seems to be no valid reason why the language now contained in H. R. 8742 and S. 377, or similar language, should not suffice to convey the intended meaning. The word "overcharge" is already defined in 16 (3) (g) and comparable sections of the Interstate Commerce Act. Removal of the word "overpayment" and insertion of "overcharge," etc., in section 322 will unmistakably serve the intended purpose. Retention of the word "overpayment" and a statement of definition of that word could have a disturbing effect upon presently pending litigation involving the United States and certain carriers. These carriers insist that the deduction procedure is not available to the Government in instances comparable to those in which the Interstate Commerce Commission and the courts have declared the published and filed tariff rates charged prima facie to be unreasonable.

Representatives of interested carriers suggest that the definition of the word "overpayment" as proposed to be set forth in section 9 of the present tentative draft of amendments to H. R. 8742 is now implicit in section 322 and that the definition is declaratory of existing law. The word "overpayment" in section 322 has not been judicially defined although, as we have indicated, the Supreme Court of the United States (*United States* v. *Western Pacific R. Co.*, 352 U. S. 59) has found our deduction action valid in a case where a question of reasonableness arose.

As stated in the Western Pacific R. Co. case (pp. 73–74):

"We are told that the Government can protect itself, when it believes it has been charged an unreasonable rate, by filing an affirmative claim for reparations with the Commission within the two-year period provided by § 16 (3). But Congress has relieved the Government from filing such anticipatory suits by expressly authorizing the General Accounting Office to deduct overpayments from subsequent bills of the carrier if, on postaudit, it finds that the United States has been overcharged. This right was thought to be a necessary measure to protect the Government, since carriers' bills must be paid on presentation and before audit. On respondents' theory the Govern-

ment could invoke this right only at the peril of losing its defense in a later suit by the carrier. Evidently this was not the purpose of Congress in authorizing unilateral setoff."

We urge, therefore, that, if it is the will of Congress to make the change in section 322 to which we object, the least controversial and clearest way to do so is simply to use the word "overcharge" and not "overpayment" defined as "overcharge."

If, on the other hand, the committee still prefers the word "overpayment," associated with a spelled-out definition which is the equivalent of the definition of overcharge, it would seem essential to the neutralization of attempts to prejudice the position of the United States in presently pending litigation and in the disposition of claims before our Office involving similar issues, that the committee at least incorporate in its report on H. R. 8742 a statement to the effect that the definition of "overpayment," as in the present draft (sec. 9), is not to be viewed as affecting any causes or rights existing as a result of any transaction occurring prior to the enactment of the bill. In other words, it seems appropriate that the committee clearly disclaim any intention of settling by legislation any existing controversy centering upon the meaning of "overpayment" prior to the enactment of the bill. Such a statement would help establish that interested parties are to be left in the same position as to previous causes of action as they occupied theretofore.

Copies of this letter together with copies of a memorandum of July 3, 1958, concerning this subject, prepared for and furnished informally to the committee staff, have been furnished to Congressmen O'Hara and Dingell, in accordance with their request.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 31, 1957.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letter of July 18, 1957, asking for a prompt report, together with such comment as we may desire to make on H. R. 8742.

This bill would amend parts I, II, III, and IV of the Interstate Commerce Act, as amended, by providing that the limitations included in sections 16 (3), 204a, 308 (f), and 406a of the act "shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers" and that with respect to such transportation "the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

This bill also proposes to limit to 3 years the time in which overcharges could be recovered by the United States by deduction of such overcharges from amounts otherwise found due the overpaid carrier, but section 322 of the Transportation Act of 1940 (49 U. S. C. 66),

would still provide for the payment of carriers' bills upon presentation, prior to audit and settlement by the General Accounting Office. In addition to the time limitation on the right to recover overcharges by setoffs, section 9 of H. R. 8742 would make another significant change in the language of section 322 by limiting such recovery to an "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act" instead of the presently specified "overpayment" which may be recovered.

It should be noted that the carriers which would be affected by the provisions of H. R. 8742 presently are allowed 6 full years from the date when the cause of action first accrues in which to bring suit against the United States in the Court of Claims or the United States district courts to recover their transportation charges (28 U. S. C. 2401 and 2501), and 10 full years after a claim cognizable in the General Accounting Office first accrues in which to file such claim here (31 U. S. C. 71a and 236). While H. R. 8742, if enacted, apparently would limit the carriers, as well as the United States, to 2 years in which to file suits in the courts or, in the case of the latter, the alternative of filing complaints with the Interstate Commerce Commission, its enactment apparently would have no effect on the 10 years allowed for the filing of such claims against the United States in our Office. Accordingly, if H. R. 8742 is favorably considered, it seems appropriate that Congress consider for adoption legislation excluding transportation claims from the purview of title 31, United States Code, sections 71a and 236. Action to this end would help maintain an equality of position insofar as the carriers and the Government are concerned as to claims cognizable in the General Accounting Office, if section 9 of H. R. 8742 is made law.

If a limitation of 2 years should be imposed within which suits might be brought either by a carrier or by the United States it simply would mean that suit would be brought within that time on numerous uncollected items involving disagreement, and the dockets of the Federal courts, already seriously in arrears, would be further heavily encumbered by many additional transportation suits on matters susceptible of administrative adjustment but for such time limitation.

Frequently, it has been said that the United States is the largest single user of the freight and passenger transportation services of the carriers. Some idea of the extent of its use of carrier services may be obtained by a brief review of our annual reports to the Congress for the fiscal years 1951 through 1956, inclusive. Such reports show that during those 6 years we completed the audit of more than 21 million bills of lading and a like number of transportation requests, on which there was paid to the carriers more than $3,940 million for the transportation of property and more than $1,104 million for the transportation of persons for or on behalf of the United States. All of these disbursements were made prior to audit and settlement in the General Accounting Office, pursuant to the provisions of section 322 of the Transportation Act of 1940 (49 U. S. C. 66). In the course of our audit for the above fiscal years, we found overpayments aggregating more than $88 million on the freight movements and more than $12 million on the passenger movements, or a total of more than $100 million. Our annual reports further show that the above totals did not include any of the World War II transportation disbursements which were being reaudited during those 6 fiscal years.

At the close of fiscal year 1951, we reported a backlog of some 30 months' transportation disbursements which had not at that time been audited, and at the close of fiscal year 1956 we had on hand a backlog of about 27 months' disbursements which had not as yet been reached for audit. The reaudit of the World War II disbursements for such services has now been substantially completed and most of our technicians heretofore engaged in that task have already, or soon will be, assigned to the current audit, so that by the end of fiscal year 1958, we expect to substantially reduce the timelag between payment administratively and audit by our Office. However, for the time being, the lag between payment and audit will continue to represent a considerable portion of the 2-year limitation proposed by H. R. 8742 for the initiation of actions before the Commission or the courts to recover overcharges in appropriate cases. So long as this condition prevails, only a relatively short period of time will be available for the audit of transportation payments made administratively without prior audit, the statement of overcharges determined here and, in appropriate instances, for the preparation and analysis of data and information necessary for the filing of complaints with the Interstate Commerce Commission, or the courts, for the recovery of overcharges which cannot otherwise be recovered by setoffs, in proper cases, from amounts otherwise due the carrier, pursuant to section 322 of the Transportation Act of 1940 as amended.

We are, of course, constantly reviewing our procedures with respect to the audit of transportation disbursements with the view toward improvements and changes designed to speed up the audit and to shorten, where possible, the timelag between payment and audit. However, the volume of such payments, the lack of properly trained rate technicians, the insufficiency of the records respecting many of the individual transactions (necessitating development through investigations and correspondence with the shipping agencies and the carriers of pertinent supplemental data needed to complete the audit action), and other factors, operate to retard our efforts to accelerate our audit procedures. It is not believed that the carriers would favor an audit prior to payment of their bills.

We have in the past concurred in legislative proposals to impose a reasonable limitation on actions involving section 22 quotation arrangements, but H. R. 8742, as introduced, would apparently involve all payments made by the United States to common carriers and freight forwarders for transportation services without regard to the kinds of rates applied for such services. Carriers already are specially favored through payment of their billings as presented without prior audit here. If there are cogent reasons for further favoring carriers over other parties who have obtained overpayments of public money those reasons are not readily apparent. In view of the volume of such payments and the difficulties in accomplishing a prompt audit of the payment made administratively, we are not at all convinced that the limitations on actions to recover excess charges paid pursuant to section 322 would be in the public interest. Certainly, as to time of war or national emergency, when transportation disbursements can reasonably be expected to be greatly increased, we are of the view that the limitations here proposed would seriously curtail recoveries of excess charges that might be paid in the future prior to our audit, in accordance with the provisions of section 322 of the Transportation Act of 1940, as amended.

As to the proposal contained in section 9, page 4 of H. R. 8742, for the substitution of the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act" for the word "overpayment," we have long viewed payments made for the transportation of Government property in excess of the lawful, as distinguished from the legal, rates on file with the Interstate Commerce Commission as overpayments subject to recovery by the United States, where the unlawfulness of such excess rates has been established generally by judicial or Commission precedent. We have considered it our right and duty to give effect in our audit to establish principles of tariff construction, as enunciated by the Interstate Commerce Commission and the courts in making a determination as to whether or not an overpayment has been made in a given instance. Thus, when we have found that charges were paid on basis of a rate which, though legally published in a tariff on file with the Interstate Commerce Commission, in comparable circumstances the Commission has declared to be prima facie unlawful in violation of some particular provision of the Interstate Commerce Act, we have treated as an overpayment that portion of the total charges paid in excess of just and reasonable and otherwise lawful charges for the services rendered.

As an illustration, both the Commission and the courts have consistently declared that a through rate which exceeds the aggregate of intermediate rates to and beyond a point through which the through rate applies is prima facie unreasonable to the extent that it exceeds the aggregate of intermediate rates. Likewise, it has been consistently held, in cases where a shipper does not specify any particular rate, that misrouting on the part of an initial carrier of a shipment resulting in charges applicable via the route of movement higher than would otherwise obtain had a lower rated route been selected by the initial carrier, over which the unrouted shipment could have been transported to the designated destination, is an unreasonable practice, and that the shipper should not be penalized by the negligence of the initial carrier in misrouting the shipment. As stated, we have given effect to these and other principles in decided judicial and Commission proceedings, which furnish authority for the adjustment of similar transactions in our audit.

If the substitution of the "overcharge" phrase for the word "overpayment" is given effect it would seem that the only relief then available to the Government from excess charges not based on an "overcharge," as proposed to be defined, would be through complaint to the Interstate Commerce Commission for a determination of the lawfulness of the excessive charges paid. Even if the Government prevailed in such a proceeding before the Interstate Commerce Commission, in instances where the services were rendered by motor carriers, it would then be necessary to sue the motor carriers in a court of competent jurisdiction to recover the excess charges so paid, since part II of the Interstate Commerce Act does not authorize the Commission to issue an order for the payment of reparation for the exaction of unlawful charges by a motor carrier.

It is our firm belief that the proposal contained in section 9 of H. R. 8742 to restrict the right of recovery by deduction to 3 years after date of payment of bills wherein overcharges are noted, if enacted, will preclude recoveries of substantial sums of overpayments which prop-

erly should be restored to the public Treasury. We feel that the present proposal of 3 years should be expanded to 6 years.

However, if the 3-year provision is to be given favorable consideration it would be in the public interest to provide for the suspension of the running of the proposed 3-year limitation during time of war and for a reasonable time following the cessation of hostilities as proclaimed by the President or by a concurrent resolution of the Congress.

For the reasons stated, we do not believe that the provisions of H. R. 8742 would be in the public interest. Such a proposal reasonably can be expected to increase the workload and expenses of the General Accounting Office, the Department of Justice, the Interstate Commerce Commission, the administrative departments and agencies of the Government, as well as those of the carriers involved.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

UNITED STATES GENERAL ACCOUNTING OFFICE,
Washington, D. C., July 3, 1958.

Memorandum.

We have consistently advocated the view that section 322 of the Transportation Act of 1940 (49 U. S. C. 66) should not be amended, and we are still opposed to such amendment. However, if Congress does go ahead with proposals to change section 322, we do not think the change should be in the form now contained in the latest draft.

Except for our opposition to changes in section 322, we should have no particular reasons to object to the content of the draft of the proposed amendments, keeping in mind that it is designed to accomplish what is desired by the committee insofar as the extension of the periods of limitation in section 16 (3) and comparable provisions of the Interstate Commerce Act are concerned. Much of the draft reflects adoption of the carriers' suggested modifications and additions, but we have no quarrel with the form of statement inasmuch as, generally, there are various ways of expressing the same idea on the subject matter. It seems fair, as now proposed, to apply the 3-year limitation to both private and Government transactions.

However, from out point of view, it would seem that the language contained in H. R. 8742, as expanded in S. 377, relating to section 322 of the Transportation Act of 1940, is preferable to the language in the present draft in that the word "overpayment" would be stricken by the terms of H. R. 8742 and S. 377 and the word "overcharge" substituted, with the appropriate additional language referring to the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board. We have always viewed the word "overpayment" as comprehending more than "overcharge" as defined in the act. See, in this connection, *United States* v. *Western Pacific R. Co.* (352 U. S. 59). Now to retain the word and to specifically define "overpayment" as meaning only "overcharge" could operate to prejudice the Government's position in pending litigation by possibly lending support to certain carriers' arguments that the scope of the word "overpayment" in section 322 is restricted to "overcharge" as defined in section 16 (3) and comparable provisions of the act. We, of course, have consistently disagreed with that position. It

would appear contributive to the better protection of the Government's overall interest if the word "overcharge" were substituted for "overpayment" in section 322 as it presently appears. There seems to be no good reason for retaining the word "overpayment" if, as the carriers insist, it is to signify only "overcharge," which is already clearly defined in section 16 (3) and comparable provisions of the Interstate Commerce Act. It is assumed that the committee would not approve language which might have the effect of resolving pending court actions in which the meaning of the word "overpayment" is in issue, even though it is appreciated that section 10 of the present draft states that the provision relating to section 322 "shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act."

Thus, we believe that section 9 of H. R. 8742 should read:

"Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

"(1) By striking the words 'overpayment to' and substituting therefor the words 'overcharges by'.

"(2) By adding a new sentence at the end of the section as follows: " 'The term "overcharges" shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act: *Provided, however,* That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later.' "

If the committee does not favor the above-suggested revision of section 322, it is recommended that effort be made to have included in the committee report on H. R. 8742 language appropriately indicating its intention that the definition of "overpayment" in section 322 is not to be relied upon as contributing to the settlement of any matter in which rights and liabilities accruing prior to enactment of the amendment are in issue. The following statement is suggested as serving this purpose:

The General Accounting Office objects to any definition of "overpayment" which would approximate the definition of "overcharge." It opposes any change in the present wording of section 322. However, it recommends that, if section 322 is to be amended, the word "overpayment" be stricken and that the word "overcharge" be substituted therefor. The General Accounting Office apprehends that the position of the United States in presently pending court cases and in claims before it for settlement would be prejudiced by the retention of the word "overpayment," accompanied by a separate definition which coincides, in significant part, with the definition of "overcharge" in section 16 (3) (g) and comparable provisions of the Interstate Com-

merce Act. Your committee does not view the present form of amendment (which retains "overpayment") of section 322, nor is it intended that the amendment be viewed, as affecting or controlling the disposition of any causes or rights existing as a result of any transaction occurring prior to the enactment of this bill. Such matters should be settled in accordance with legal principles and authorities applicable prior to the amendment of section 322.

EDWIN W. CIMOKOWSKI,
Assistant General Counsel.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT, AS AMENDED

ORDERS OF COMMISSION AND ENFORCEMENT THEREOF; FORFEITURES

SEC. 16. (1) * * *

* * * * * * *

(3) (a) All actions at law by carriers subject to this part for recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

(b) All complaints against carriers subject to this part for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (d).

(c) For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this part within two years from the time the cause of action accrues, and not after, subject to subdivision (d), except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(d) If on or before expiration of the two-year period of limitation in subdivision (b) or of the two-year period of limitation in subdivision (c) a carrier subject to this part begins action under subdivision (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(*e*) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon*

the date of a subsequent collection for overcharges made by the United States, whichever is later.

(f) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(h) The provisions of this paragraph (3) shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue, except that actions at law begun or complaints filed with the Commission against carriers subject to this part for the recovery of overcharges where the cause of action accrued on or after March 1, 1920, shall not be deemed to be barred under subdivision (c) if such actions shall have been begun or complaints filed prior to enactment of this paragraph or within six months thereafter.

(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part.

* * * * * * *

ACTIONS FOR RECOVERY OF CHARGES; LIMITATION OF ACTIONS

SEC. 204a. (1) All actions at law by common carriers by motor vehicle subject to this part for the recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

(2) For recovery of overcharges, action at law shall be begun against common carriers by motor vehicle subject to this part within two years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the two-year period of limitation in paragraph (2) a common carrier by motor vehicle subject to this part begins action under paragraph (1) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

(5) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

(6) The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

(7) *The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part.*

REPARATION AWARDS; LIMITATION OF ACTIONS

SEC. 308. (a) * * *

* * * * * * *

(f) (1) (A) All actions at law by carriers subject to this part for the recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

(B) All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after, subject to subdivision (D).

(C) For the recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers subject to this part within two years from the time the cause of action accrues, and not after, subject to subdivision (D), except that if claim for the overcharge has been presented in writing to the carrier within the two-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(D) If on or before expiration of the two-year period of limitation in subdivision (B) or the two-year period of limitation in subdivision (C) a carrier subject to this part begins action under subdivision (A) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(2) The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

(3) A complaint for the enforcement of an order of the Commission for the payment of money shall be filed in the district court or the State court within one year from the date of the order, and not after.

(4) The term "overcharges" as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(5) [1]

(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part.

* * * * * * *

ACTIONS FOR RECOVERY OF CHARGES; LIMITATION OF ACTIONS

SEC. 406a. (1) All actions at law by freight forwarders subject to this part for the recovery of their charges, or any part thereof, shall be begun within two years from the time the cause of action accrues, and not after.

(2) For recovery of overcharges action at law shall be begun against freight forwarders subject to this part within two years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the two-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the two-year period of limitation in paragraph (2) a freight forwarder subject to this part begins action under paragraph (1) for recovery of charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the freight forwarder.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the freight forwarder, and not after. *With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later.*

(5) The term "overcharges" as used in this section shall be deemed to mean charges for service in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

(6) The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part.

[1] This paragraph was repealed by § 4 of the Act of June 29, 1949 (63 Stat. 281).

TRANSPORTATION ACT OF 1940 (49 U. S. C. 66)

SEC. 322. Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act of 1938, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office, but the right is hereby reserved to the United States Government to deduct the amount of any [overpayment] *overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act,* to any such carrier from any amount subsequently found to be due such carrier[.]: *Provided, however, That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted.*

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Union Calendar No. 988

85TH CONGRESS
2D SESSION

H. R. 8742

[Report No. 2346]

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1957

Mr. FLYNT introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

AUGUST 1, 1958

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That the Interstate Commerce Act is amended as follows:~~

~~SECTION 1. At the end of section 16 (3) (c) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date~~

of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(i)":

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the fol-

lowing sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any

~~action brought before any court by or against carriers subject to this part.~~"

~~SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:~~

~~(1) By striking the word "overpayment" and substituting therefore the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."~~

~~(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however,* That such deductions shall be made within three years from the time of payment of bills wherein overcharges are noted."~~

~~SEC. 10. The provisions of this Act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provisions of this Act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.~~ *That the Interstate Commerce Act, as amended, is amended as follows:*

(1) Amend section 16 (3) as follows: In subparagraph (a) strike out "two years" and insert "three years"; in subparagraph (c) strike out "two years" and insert "three

years", and strike out "two-year" and insert "three-year"; and in subparagraph (d) strike out the word "two-year" the second time it occurs and insert "three-year".

(2) Add the following new subparagraph (i) to section 16 (3):

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: Provided, however, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(3) Amend section 204a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

(4) Add the following new paragraph (7) to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: Provided, however, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(5) Amend section 308 (f) (1) as follows: In subparagraph (A) strike out "two years" and insert "three years"; in subparagraph (C) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in subparagraph (D) strike out the word "two-year" the second time it occurs and insert "three-year".

(6) Add the following new subparagraph (5) to section 308 (f):

"(5) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any

action brought before the Commission or any court by or against carriers subject to this part: Provided, however, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(7) Amend section 406a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

(8) Add the following new paragraph (7) to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: Provided, however, That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for

the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the words "overpayment to" and substituting therefor the words "overcharges by".

(2) By adding a new sentence at the end of the section as follows: "The term 'overcharges' shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fare, and charges established pursuant to section 22 of the Interstate Commerce Act: Provided, however, That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3)

subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

SEC. 3. The provisions of this Act which amend the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provision of this Act which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

Amend the title so as to read: "A bill to amend the Interstate Commerce Act and the Transportation Act of 1940, with respect to periods of limitation applicable to actions or claims, including those by or against the United States, for recovery of charges for the transportation of persons or property, and for other purposes."

Union Calendar No. 988

85TH CONGRESS
2D SESSION

H. R. 8742

[Report No. 2346]

A BILL

To amend the Interstate Commerce Act to provide a two-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within three years from time of payment.

By Mr. FLYNT

JULY 16, 1957

Referred to the Committee on Interstate and Foreign Commerce

AUGUST 1, 1958

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

H. R. 8742

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

Issued August 6, 1958
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HIGHLIGHTS: House debated bill to increase public debt limit. House and Senate committees reported bill to facilitate USDA insured loans. Rep. Mathews urged passage of House committee farm bill. House subcommittee ordered reported bill for transfer of employees to international organizations. Senate committee reported foreign aid appropriation bill.

HOUSE

1. PUBLIC DEBT. Debated H. R. 13580, to increase the public debt limit to $285 billion. At the request of Rep. McCormack a vote on the bill was postponed until today, Aug. 6. pp. 14880, 14883-89, 14889-910, 14946

2. FARM LOANS. The Agriculture Committee reported with amendment H. R. 10965, to improve the insured-loans program under Title I of the Bankhead-Jones Farm Tenant Act (H. Rept. 2447). p. 14946

3. PERSONNEL. A subcommittee of the Post Office and Civil Service Committee ordered reported S. 4004, to encourage transfers of Federal employees for service with international organizations. p. D799

4. MILITARY CONSTRUCTION. Received the conference report on H. R. 13015, the military construction authorization bill (H. Rept. 2429). As reported by the conferees the bill limits the number of houses which may be contracted for with the use of foreign currencies accumulated under Public Law 480 to 4,000 units. pp. 14866-79, 14946

5. TRANSPORTATION; TRAVEL. Passed under suspension of the rules S. 377, to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the U. S. Government. Substituted the language of H. R. 8742, as passed by the House earlier in the day, for that of S. 377. H. R. 8742 was laid on the table. pp. 14880-81, 14889

6. FARM LABOR. The Rules Committee reported a resolution for consideration of H. R. 10360, to continue for 2 years the authority for the Attorney General to permit the importation of aliens for agricultural employment. pp. 14889, 14964

7. FARM PROGRAM. Rep. Matthews explained the provisions of S. 4071, the farm bill, as reported by the House Agriculture Committee, and urged enactment of the Committee bill. pp. 14924

Rep. Hill inserted a letter from the National Wool Growers Assoc. urging passage of S. 4071 as reported by the House Agriculture Committee, and stated, "We feel certain that the conference committees can iron out major differences existing in the House and Senate versions of the farm bill and can develop legislation which will be acceptable to the administration." p. 14910

8. SALINE WATER. The Interior and Insular Affairs Committee reported with amendment S. J. Res. 135, to provide for the construction by Interior of demonstration plants for the production, from saline or brackish waters, of water suitable for agricultural, industrial, and municipal uses (H. Rept. 2450). p. 14946

9. RECLAMATION. The Interior and Insular Affairs Committee reported S. 4009, without amendment, to increase the amount authorized to be appropriated for the Washoe reclamation project, Nev. and Calif. (H. Rept. 2451); and S. 3448, with amendment, to permit the Secretary of the Interior to authorize increases in the 160-acre limitation on the Seedskadee Reclamation project (H. Rept. 2454). p. 14946

10. CONTRACTS. The Ways and Means Committee reported without amendment H. R. 11749, to extend the Renegotiation Act of 1951 for 2 years (H. Rept. 2466). p. 14947

for construction made necessary by changes in Air Force missions, etc. This matter is dealt with with respect to section 102 under the Army title of the bill. The same solution of the difference was arrived at by the provision of $17,500,000, as in titles I and II.

The other differences between the House and Senate versions were resolved as follows:

The House receded with respect to Lowry Air Force Base primarily on the basis that the Air Force could no longer defend this item in any specific fashion since the location of the facility still awaits decisions within the Department of Defense.

The insertion by the Senate of facilities for Moody Air Force Base was accepted by the House conferees with an amendment. The amendment added appropriate authority for troop housing and utilities at this installation. The troop housing at Barksdale Air Force Base, which had been deleted by the Senate, was reinserted by the conferees with the Senate receding. The House receded with respect to the three commissaries mentioned above. The classified facility under the Aircraft Control and Warning System was permitted to remain in the bill with the House receding.

Section 302 of the bill contains authority similar to that contained in section 102 under the "Army" title. The solution arrived at with respect to this section is identical with that for the similar Army authority. This item is dealt with in some greater detail below.

TITLE IV

Secretary of Defense

Under title IV, the Senate had inserted language which appeared to place operational authority in the Secretary of Defense with respect to defense missiles. As indicated under both the Army and Air Force portions of this statement, a new section was inserted in lieu of section 402 of the Senate version of the bill.

All conferees felt that the function of this new section and the purposes which it is designed to accomplish could best be described by setting out the exact language of this important change in the bill. This new language clarifies the original intent not to make authorizations or appropriations in operational matters directly to the Secretary of Defense.

"SEC. 402. The Secretary of Defense or his designee shall, prior to the utilization of the funds authorized by sections 102 and 302 of this Act for establishing or developing classified installations and facilities for defense missiles by the Secretary of the Army and the Secretary of the Air Force, respectively, determine with respect to each defended area, which missile or combination of missiles will be employed in that area. In making such determination, the Secretary of Defense shall have the authority to transfer such funds as may be made available pursuant to the authorization contained in such sections for such installations and facilities, to the Secretary of the Army or the Secretary of the Air Force, as the case may be, to enable such Secretaries to utilize the authority contained in such sections in accordance with such determinations."

TITLE V

General provisions

The areas of disagreement under title V were not numerous but did involve matters of considerable importance.

The first item of disagreement related to section 516 of the Senate version of the bill relating to contracts entered into by the United States. The House and Senate conferees both had exactly the same purpose in mind and that was to insure that to the maximum extent possible, construction contracts within the Department of Defense shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army, or the Bureau of Yards and Docks, Department of the Navy. The House conferees felt that the Senate language permitted a latitude which might fail to achieve the end sought and the Senate receded by accepting a new version of the language appearing at the first part of section 506. The new language agreed upon by the conferees is as follows:

"SEC. 506. Contracts for construction made by the United States for performance within the United States, its Territories and possessions, under this Act shall be executed under the jurisdiction and supervision of the Corps of Engineers, Department of the Army, or the Bureau of Yards and Docks, Department of the Navy, unless the Secretary of Defense determines that because such jurisdiction and supervision is wholly impracticable such contracts should be executed under the jurisdiction and supervision of another department or Government agency."

The conferees wish to stress the importance of this portion of the bill since it is their firm belief that the Corps of Engineers and the Bureau of Yards and Docks are fully qualified by long experience in the administration of construction contracts and should, therefore, be fully utilized. It will be noted that the use of any other department or Government agency for the supervision of such contracts is limited to those instances where their jurisdiction and supervision by the Corps or the Bureau are wholly impracticable.

The next area of disagreement related to the exception from the repealer language of the backup authorization for rental guaranty housing. The Senate had deleted this item from the bill, but receded.

Section 512 of the bill had no counterpart in the House version. It is designed to permit all Wherry housing, whether mandatory or permissive, to be acquired by the military departments without the need for a line item in the annual construction bill.

Section 513, which also had no counterpart in the House version, limits the number of surplus commodity houses to 4,000 units for fiscal year 1959, and Capehart houses to 30,000 units for the same period. The House conferees made certain modifications to the Senate language which were acceptable to the Senate conferees. The principal change was the substitution for the word "constructed" of the words "contracted for." This will permit more orderly administration of the law and will express in better terms the actual intention of the Senate.

Subsection (d) of this section sets out the procedure which will be followed in the condemnation of Wherry housing projects. In great part, this subsection repeats existing law. It did, however, embody certain important differences from existing law, principally the mandatory requirement that the issue of just compensation for a Wherry project be determined by a commission of three persons to be appointed by the court. The Senate language, as stated above, required that compensation be determined by commissioners. Normal practice contemplates that the court exercise discretion as to whether commissioners shall be appointed or the matter of compensation be determined by a jury. The Senate conferees determined that their language should be made permissive rather than mandatory and as this is a privileged motion, the Senate changed its language from mandatory to permissive. Subsection (d) (2) was stricken from the bill in view of the fact that the Senate's change of the word "shall" to the word "may" made this particular subsection unnecessary.

Section 516 of the Senate version extended until 1962 the period within which substandard family housing must be rehabilitated, converted to other use, or destroyed. The House conferees felt that this extension would tend to perpetuate a situation which everyone is agreed should be terminated at the very earliest possible date. The House conferees agreed, however, to a 1-year extension, until 1961, but wish to stress their strong interest in the prompt reconversion or destruction of substandard housing.

TITLE VI

Reserve forces facilities

The Senate amendment contained a provision authorizing the Secretaries of the military services with the approval of the Secretary of Defense, to establish or develop Reserve facilities other than those authorized by section 603 providing that the total cost of such facilities by any service would not exceed 10 percent of the total amount authorized to be expended by that service and would not exceed the total amount authorized for such service.

The Senate amendment provides a flexibility for the military services which appears to be necessary. This is particularly true in that the bill is the first wherein reserve facility construction has been authorized by line item instead of by general authorizations as has been done in the past.

In addition, it will allow minor deviations from the line items contained in the bill in the event State or Federal authorities find that a project is needed prior to the submission of the next annual military construction bill.

The House recedes.

The House bill contained authorization for 35 National Guard armories at a cost of $5,007,000. The Senate amendment added 108 armories at an additional cost of $15,093,000.

The managers on the part of the House concurred with the Senate in that additional guard armories are needed. Furthermore, the States have appropriated and made available as matching funds $35 million which cannot be used until the Federal Government contributes its share.

At the present time the National Guard Bureau estimates that more than 700 guard armories are still needed throughout the country. In view of this shortage it was believed that guard facilities in excess of those contained in the House bill should be authorized.

The House recedes.

CARL VINSON,
OVERTON BROOKS,
PAUL J. KILDAY,
CARL T. DURHAM,
L. MENDEL RIVERS,
LESLIE C. ARENDS,
LEON C. GAVIN,
BOB WILSON,
KATHARINE ST. GEORGE,
Managers on the Part of the House.

MISS BERTHA ADKINS

(Mrs. ST. GEORGE asked and was given permission to extend her remarks at this point in the RECORD.)

Mrs. ST. GEORGE. Mr. Speaker, on my return from a very brief visit to Brazil to attend the Interparliamentary Union Conference, I heard with great pleasure that the President had named my very good and dear friend, Miss Bertha Adkins, to the position of Under Secretary of Health, Education, and Welfare.

This is a most felicitous choice. It is high time that a woman of talent and capability be a member of the Cabinet.

Miss Adkins is admirably fitted through her experience in the field of education, her gift for getting on with people, her calm poise and serene outlook to fill this position as it should be filled, and the women of America will be able to take pride in the recognition given to one

of their sex, not because she is a woman but because she is far and away the best person for the job.

CORRECTION OF ROLLCALL

Mr. POFF. Mr. Speaker, on rollcall No. 139 I was incorrectly listed as absent. I was present in the Chamber and answered to my name when it was called. I ask unanimous consent that the permanent RECORD and Journal may be corrected accordingly.

The SPEAKER. Without objection, the permanent RECORD and the Journal will be corrected accordingly.

There was no objection.

A GRISLY CALL FOR ACTION ON THE KENNEDY-IVES BILL

(Mr. UDALL asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. UDALL. Mr. Speaker, the human-torch burning of Teamster Agent Frank Kierdorf, in Pontiac, Mich., yesterday was a grisly and unanswerable argument for immediate enactment of the Kennedy-Ives labor-reform bill.

This incident was the logical result of an ex-convict occupying a position of leadership in a racket-ridden union. There is little wonder that Mr. Hoffa and his ilk are strenuously opposed to the Kennedy-Ives labor-reform bill.

The attack victim, Frank Kierdorf, could never have become a union official had the Kennedy-Ives bill been in force.

The Kierdorf burning is a gruesome call for action by the House before Congress adjourns on the Kennedy-Ives bill.

INCREASING THE PUBLIC DEBT LIMIT

Mr. SMITH of Virginia, from the Committee on Rules, reported the following privileged resolution (H. Res. 671, Rept. No. 2429), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 13580) to increase the public debt limit, and all points of order against said bill are hereby waived. That after general debate, which shall be confined to the bill, and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be considered as having been read for amendment. No amendment shall be in order to said bill except amendments offered by direction of the Committee on Ways and Means. Amendments offered by direction of the Committee on Ways and Means may be offered to any section of the bill at the conclusion of the general debate, but said amendments shall not be subject to amendment. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit.

AMENDING THE INTERSTATE COMMERCE ACT

Mr. FLYNT. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 8742) to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment, as amended.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Interstate Commerce Act, as amended, is amended as follows:

(1) Amend section 16 (3) as follows: In subparagraph (a) strike out "2 years" and insert "3 years"; in subparagraph (c) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in subparagraph (d) strike out the word "2-year" the second time it occurs and insert "3-year."

(2) Add the following new subparagraph (i) to section 16 (3):

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(3) Amend section 204a as follows: In paragraph (1) strike out "2 years" and insert "3 years"; in paragraph (2) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in paragraph (3) strike out "2-year" and insert "3-year."

(4) Add the following new paragraph (7) to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(5) Amend section 308 (f) (1) as follows: In subparagraph (A) strike out "2 years" and insert "3 years"; in subparagraph (C) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in subparagraph (D) strike out the word "2-year" the second time it occurs and insert "3-year."

(6) Add the following new subparagraph (5) to section 308 (f):

"(5) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shal be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(7) Amend section 406a as follows: In paragraph (1) strike out "2 years" and insert "3 years"; in paragraph (2) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in paragraph (3) strike out "2-year" and insert "3-year."

(8) Add the following new paragraph (7) to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the words "overpayment to" and substituting therefor the words "overcharges by."

(2) By adding a new sentence at the end of the section as follows: "The term 'overcharges' shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fare, and charges established pursuant to section 22 of the Interstate Commerce Act: *Provided, however*, That such deductions shall be made within 3 years (not including any time of war) from the time of payment of bills: *Provided further*, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within 3 years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

SEC. 3. The provisions of this act which amend the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this act. The provision of this act which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this act.

The SPEAKER. Is a second demanded?

Mr. MARTIN. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. FLYNT. Mr. Speaker, H. R. 8742 has a committee amendment which strikes out all after the enacting clause and inserts the committee draft of the

bill. It provides a 3-year statute of limitations on actions involving the transportation of property and passengers of the United States Government and provides that the deductions for overcharges by the United States shall be made within 3 years from the time of payment.

The purpose of this legislation is to prevent a repetition of a series of events which have taken place during recent years where, under existing law, it has been possible to go back over a period of 15, 17, and even 20 years to claim reimbursement or deductions at times when records and witnesses are not available.

Mr. MARTIN. Mr. Speaker, will the gentleman yield?

Mr. FLYNT. I yield to the gentleman from Massachusetts.

Mr. MARTIN. Does this bill come out with a unanimous vote of the committee?

Mr. FLYNT. Originally, there was an objection but the member who made that objection has informed me that he has withdrawn that objection. The period of limitations set up under the bill will apply equally to the Government and to the carrier. The period of limitations is set at 3 years within which either side may claim either an underpayment or an overpayment.

The General Accounting Office raised some question as to the definition of the word overpayment, and the committee amendment took verbatim the recommendation made by the General Accounting Office. While the General Accounting Office says that they do not necessarily recommend the bill, they have no objection to it as amended by the committee.

The SPEAKER. The question is, Will the House suspend the rules and pass the bill H. R. 8742, as amended?

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The title was amended so as to read: "A bill to amend the Interstate Commerce Act and the Transportation Act of 1940, with respect to periods of limitation applicable to actions or claims, including those by or against the United States, for recovery of charges for the transportation of persons or property, and for other purposes."

A motion to reconsider was laid on the table.

OPERATIONS UNDER PUBLIC LAW 480, 83d CONGRESS, AS AMENDED—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 431)

The SPEAKER laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, referred to the Committee on Agriculture and ordered to be printed:

To the Congress of the United States:

I am transmitting herewith the 8th semiannual report on activities carried on under Public Law 480, 83d Congress, as amended, outlining operations under the act during the period January 1 through June 30, 1958.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *August 5, 1958.*

EXTENSION OF TITLE VII OF THE PUBLIC HEALTH SERVICE ACT

Mr. ROBERTS. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 12876) to extend title VII of the Public Health Service Act (relating to health research facilities) for 5 years, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted, etc., That (a) section 704 of title VII of the Public Health Service Act is amended by striking out "two" and inserting in lieu thereof "five."

(b) Subsection (a) of section 705 of title VII of the Public Health Service Act is amended by striking out "1958" and inserting in lieu thereof "1961."

The SPEAKER. Is a second demanded?

Mr. GROSS. Mr. Speaker, I demand a second in order that we may have an explanation of the bill.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. ROBERTS. Mr. Speaker, this bill merely extends title VII of the Public Health Act, which was passed in 1956, at that time known as the Priest bill, and which authorized $30 million a year for the construction of research facilities in the fields of the killing and crippling diseases such as cancer, heart disease, arthritis, and many other cripplers and killers.

This money is handled by the Surgeon General and an Advisory Council, which consists of 12 citizens of our country, 4 from the general public, and 8 from the fields of medicine, dentistry, public health, and osteopathy.

There was no opposition to the 1956 bill. The current bill comes to the floor unanimously from the Committee on Interstate and Foreign Commerce. As far as I know, there is no opposition to the passage of this legislation.

The purpose of the legislation, as amended, is to extend for an additional period of 3 years, title VII of the Public Health Service Act—relating to health research facilities—authorizing an annual appropriation of $30 million for each of these years.

The Health Research Facilities Act of 1956 (Public Law 835, 84th Cong.) added a new title VII to the Public Health Service Act (42 U. S. C., ch. 6A). This new title VII provided for a 3-year program of Federal matching grants for the construction of health research facilities ending June 30, 1959. It authorized an annual appropriation of $30 million. All of the $90 million presently authorized has been appropriated and most of the appropriations have already been expended or committed.

Section 710 of title VII requires the Surgeon General, in consultation with the National Advisory Council on Health Research Facilities, to report to Congress annually. The second such annual report is required by law, among other things, to "include an appraisal of the current program in the light of its adequacy to meet the long-term needs for funds for the construction of non-Federal facilities for research in the sciences related to health."

In his second annual report, submitted on February 4, 1958, the Surgeon General advised that the Public Health Service had on hand approvable applications for additional health research facilities totaling in excess of 61 million and that further applications are anticipated. More recently, the Health Research Facilities Branch of the National Institutes of Health furnished the following supplemental information:

As a result of firm applications for Health Research Facilities grants under Public Law 835, and from letters and reports to the Division of Research Grants, our records reveal that the following amounts are required to fill the needs of eligible institutions for constructing and equipping health research facilities:

Fiscal year—	
1959	$107,074,311
1960	105,600,220
1961	66,099,390

These amounts reflect grants desired.

The second annual report also contains the following conclusion with respect to the adequacy of the present program:

The act, as it stands at present, authorizes the appropriation of not to exceed $90 million over a 3-year period. Manifestly, this amount will not be adequate to meet the demonstrated and legitimate needs of health-research facilities in the Nation.

Hence, it is our recommendation that the Health Research Facilities Act be extended for additional years after July 1, 1959.

The Subcommittee on Health and Science held hearings on H. R. 6874, H. R. 6875, H. R. 7841, and H. R. 11913, on April 22, 23, and 29, 1958, in the course of which testimony was received, among others, from representatives of the Department of Health, Education, and Welfare, and the American Medical Association, the American Dental Association, the Association of American Medical Colleges, the American Association of Dental Schools, the American Veterinary Association, and the American Nurses Association. All of these witnesses stressed the great need for additional Federal matching grants both for research and educational facilities.

As a result of these hearings and the subsequent considerations of these bills by the subcommittee, clean bills were introduced by the gentleman from Mississippi, Congressman WILLIAMS (H. R. 12875), and myself (H. R. 12876). The subcommittee then reported H. R. 12876 to the full committee with amendments, limiting the extension of the health research facilities program to 3 years instead of 5 years, as proposed in the bill as introduced. Section 2 of the bill dealing with multipurpose facilities was eliminated because opposition to this provision might jeopardize the extension of the Research Facilities Act at this late date in the session.

Mr. McDONOUGH. Mr. Speaker, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from California.

Mr. McDONOUGH. Mr. Speaker, I rise in support of this bill, H. R. 12876.

I have been interested in and, therefore, have observed from time to time the development of five medical teaching centers in the State of California. It has been interesting to watch their growth from mere medical schools to complex networks of integrated institutions dedicated to research, teaching, and patient care.

Of particular interest to me has been the fact that not only did the people of California through their State appropriations participate in the development of these magnificent centers but that interested foundations, national health organizations, church groups, and other private sources from all over this Nation also contributed to the growth of these five schools.

A glance at the records of the 5 California medical centers, which are typical of the 80 other medical schools throughout this Nation, would illustrate the recognition on the part of our people that each of these is in reality a national institution and that the results of their complex programs have been felt by every State in the Union.

Perhaps the following quotation from the Rockefeller report on the United States economy best explains the willingness of the people of the United States to participate in the continuous development of our 85 national medical centers:

> Health in its broadest aspects has an importance to our Nation second only to our national security. The advances in this field during the past few decades have been remarkable. The gradual extension of the average lifetime offers ample evidence of the results of medical research, preventive medicine, and health education. The infectious diseases have ceased to be major causes of death; the hazards of childbirth have been largely overcome.
>
> But the more rapid our progress is, the greater the necessity that we think ahead in the field of health * * *. The toll of today's leading killing and crippling diseases, such as cancer, cardiovascular diseases, and mental illness, is staggering in both human and economic terms. In addition, many new types of health problems and opportunities are emerging today which demand intensive investigation.
>
> The acquisition of new knowledge is basic to advancing national health. We recommend, therefore, continued expansion of our medical research programs as rapidly as the supply of scientific talent will permit.

While we have been pleased with the private and State support of our medical schools, we in California have realized that it would have been impossible to accomplish our programs without Federal assistance. It has been our experience that matching programs made possible through the Hill-Burton Act and title VII of the Public Health Services Act have generated enthusiasm from other segments of society to come to our aid and match the Federal funds within the provisions of the statutes covering such grants.

It is for these reasons that I support and urge the passage of H. R. 12876.

(Mr. McDONOUGH asked and was given permission to revise and extend his remarks.)

Mr. MACK of Illinois. Mr. Speaker, I strongly support H. R. 12876 which extends the Health Research Facilities Act for 3 years. I also strongly support section II of this bill which would provide for multi-purpose facilities under the provisions of this act. I regret very much that the bill is being amended to eliminate this section as it is difficult to separate facilities of medical research and teaching. Our educators have told us for many years that with very rare exceptions it is impossible to differentiate between research and teaching facilities in our medical schools.

The large laboratory used for the teaching of biochemistry during the academic portion of each year is also used for research in biochemistry throughout the calendar year. The same library, hospital wards, diagnostic laboratories, class rooms—in fact the entire system of medical school facilities are utilized by all of the members of the medical team, and therefore, become part of the overall teamwork in the health professions.

In conjunction with the many uses of the physical facilities of a medical school, it is important to take notice of the insistence through the years by the faculty of these schools upon having dual-purpose facilities and resources.

They report that responsibility for and participation in research not only enables them to keep abreast of the rapidly changing trends in medicine but that it also enables them to make their own contributions to scientific literature and knowledge. In fact, more than 50 percent of all medical research currently conducted in the United States is being carried out by the faculty members of our medical schools.

Research also provides the mechanism that makes for self-education as well as providing the spark necessary to the development of a productive teacher. It is research in process that frequently makes the difference between inspirational and humdrum teaching. To emphasize the teaching setting as a two-way street, it also must be pointed out that recognition of inadequate knowledge of a particular subject during the teaching process often results in a referral to the research side of this two-way street for investigation and possible solution—at least it results in an increase in knowledge of a particular subject.

Also important is the fact that as each student is prepared for his particular type of medical practice, he must be so educated as to become competent in his translation of new knowledge made available through research. In fact, most medical schools require research experience of all students to insure the acquisition of a research attitude and research approach to clinical practice, for every clinical case is a research problem.

Even in the area of graduate and postgraduate students, we can see how the same reasoning applies. In recent years our medical schools have trained many candidates for graduate and postgraduate degrees in biological, medical, and related physical sciences as well as in many other areas. In fact, most freshmen and sophomore medical classes today include other individuals who are registered as master or doctor-of-philosophy candidates and who need medical courses as part of their preparation for such degrees. Much of their learning experience comes through active participation in varied types of research, which provides the framework within which students exercise the interest and knowledge derived from classroom, seminar, and library study. Also medical students are encouraged to delay progress toward their doctor-of-medicine degrees in order that they can do full-time research, and through this obtain master or doctor-of-philosophy degrees. Some of these give up their doctor-of-medicine aspirations entirely and dedicate themselves to pure science, research, and teaching. Hence, it would be impossible to conduct the high-level educational programs necessary for graduate and postgraduate education if there is distinction made between any of the phases of training a medical school offers as it prepares those who are to provide for maintaining the health standards of our Nation.

Therefore, Mr. Speaker, I sincerely hope that at an early date this program will be expanded upon to include multi-purpose facilities so that those institutions which are engaged in training of medical students will not be discriminated against.

I realize that in the closing hours of this Congress it is extremely difficult to have this amendment included but it seems to me that this matter should be one of the first orders of business for the next Congress.

The SPEAKER. The question is, Will the House suspend the rules and pass the bill, as amended?

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The title was amended so as to read: "A bill to extend title VII of the Public Health Service Act (relating to health research facilities) for 3 years, and for other purposes."

A motion to reconsider was laid on the table.

Mr. ROBERTS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks just prior to the passage of the bill H. R. 12876.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

RECONVEYING THE LANDS REQUIRED FOR BURKE AIRPORT TO THE FORMER OWNERS

Mr. TRIMBLE. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 637 and ask for its immediate consideration.

The SPEAKER. The time of the gentleman from Wisconsin has expired.

TO AMEND TITLE V OF THE AGRICULTURAL ACT OF 1949

Mr. THORNBERRY, from the Committee on Rules, reported the following privileged resolution (H. Res. 672, Rept. No. 2448), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 10360) to amend title V of the Agricultural Act of 1949, as amended, by striking out the termination date. After general debate, which shall be confined to the bill and continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. SMITH of Virginia. Mr. Speaker, I yield to the gentleman from Georgia [Mr. FLYNT].

TO AMEND THE INTERSTATE COMMERCE ACT

Mr. FLYNT. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 377) to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that reductions for overcharges by the United States shall be made within 3 years from time of payment.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted, etc., That the Interstate Commerce Act is amended as follows:

SECTION 1. At the end of section 16 (3) (e) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 2. Add the following new subparagraph to section 16 (3) as subparagraph "(1)":

"(1) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 3. At the end of section 204a (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 4. Add the following new paragraph "(7)" to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part."

SEC. 5. At the end of section 308 (f) (2) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 6. Add the following new subparagraph "(6)" to section 308 (f):

"(6) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part."

SEC. 7. At the end of section 406 (a) (4) add the following sentence: "With respect to the transportation of property or passengers for or on behalf of the United States, the cause of action shall be deemed to accrue upon the date of payment of the charges for the transportation involved or upon the date of a subsequent collection for overcharges made by the United States, whichever is later."

SEC. 8. Add the following new paragraph "(7)" to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in conection with any action brought before any court by or against carriers subject to this part."

SEC. 9. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the word "overpayment" and substituting therefor the words "overcharge as defined in the Interstate Commerce Act and payment in excess of rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act."

(2) By striking the period at the end and adding a colon and the following new provision, "*Provided, however*, That such deductions shall be made within 3 years (not including any time of war) from the time of payment of bills: *Provided further*, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within 3 years from the date of payment of the charges for the transportation involved or from the date of a subsequent collection for overcharges made by the United States for such transportation."

SEC. 10. The provisions of this act as amending the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this act. The provisions of this act as amending section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this act.

Mr. FLYNT. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FLYNT: Strike out all after the enacting clause in S. 377, and insert the text of H. R. 8742 as passed.

Mr. ALLEN of Illinois. Mr. Speaker, may I inquire what this is all about?

Mr. FLYNT. This is the same bill which was passed under suspension of the rules earlier today.

Mr. ALLEN of Illinois. Has it been cleared by both sides?

Mr. FLYNT. Yes; it has.

The SPEAKER. The question is on the amendment.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table; a similar House bill was laid on the table.

INCREASE IN PUBLIC DEBT LIMIT

Mr. SMITH of Virginia. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. MILLS. Mr. Speaker, I move that the House resolve itself in the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 13580) to increase the public debt limit.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H. R. 13580, with Mr. EDMONDSON in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Arkansas [Mr. MILLS] will be recognized for 1 hour, and the gentleman from New York [Mr. REED] will be recognized for 1 hour.

The Chair recognizes the gentleman from Arkansas [Mr. MILLS].

Mr. MILLS. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, the bill H. R. 13580 now before the Committee, to raise the debt limit, was reported by the Committee on Ways and Means with only one dissenting vote, on the basis of a specific request by the President for this legislation.

Following the President's request, the committee heard the testimony of the Secretary of the Treasury and the Director of the Bureau of the Budget in support of the request. The committee also heard our distinguished colleague from Texas, Mr. PATMAN, in behalf of certain amendments that he advocated.

Mr. Chairman, the bill itself poses a very serious matter, one that we do not like, and places the Ways and Means Committee in a position that the committee certainly would prefer not to be in. The chairman of that committee does not look with relish upon this responsibility. The bill itself, however, Mr. Chairman, is not technical and detailed. It is, I think, easy of understanding.

The first section strikes the figure $275 billion as the permanent debt limit, and inserts the figure $285 billion.

Section 2 of the bill provides for an additional temporary debt celing beyond $285 billion to $288 billion, from now through June 30, 1960.

Section 3 repeals the action which was taken by the Congress which became law on February 26, 1958, wherein the Congress extended the debt ceiling on a temporary basis from $275 billion to $280 billion, through June 30, 1960.

Mr. Chairman, the issue before the House at the moment is not whether this legislation is needed. There has been full discussion of the need for this legislation through consideration of the resolution making the bill in order for consideration. The issue primarily is one of whether the Congress on the facts is justified in providing for a so-called permanent increase in the debt ceiling; or whether the action taken now should merely provide for a temporary increase in the debt ceiling.

Let me, Mr. Chairman, make my own position on that point quite clear. Many Members will recall that in 1954 when a request from the administration came to Congress for an increase in the debt ceiling on a permanent basis from $275 billion to $290 billion, I offered, contrary to the wishes of my own leadership, contrary to the thinking of the administration, a motion to recommit the bill to provide for a $15 billion temporary increase in the debt.

I do not view this matter of debt ceiling lightly as many people do; I have always thought that it serves the Congress a purpose. I wanted the Congress to have a greater opportunity, then, to review our fiscal situation; so I asked you to recommit the bill and make that debt increase temporary. But the committee refused to follow my suggestion. The matter went to the Senate, and there it was converted into a temporary debt ceiling increase.

I thought I was right, and I thought the other body was right at that time in providing for a temporary increase in the debt, because in 1954 I thought I could see a day in the near future when we might be able to accumulate enough surplus in excess of our expenditures to remove the need for a temporary increase in the debt ceiling.

Mr. Chairman, it has turned out in the last few years that my thinking was right, because instead of the debt staying at the higher figure of $231 billion as it was then enacted in 1954, we found it possible to decrease that temporary increase from the $6 billion to the $3 billion in a later year and to eliminate the temporary increase entirely in a subsequent year.

So I say today, Mr. Chairman, with a great deal of regret that I cannot justify to the Members of the House on this occasion the advisability of just a temporary increase in the debt ceiling. I cannot foresee in the next 3 or 4 years the development of a situation that will permit this debt to drop below $285 billion; that is, enough below to return to a ceiling on a permanent basis of $275 billion.

I am just as concerned, if not more so, Mr. Chairman, about the American people's destroying our way of life and all those things which we have inherited from the past as I am about those things being destroyed by forces without the United States.

Mr. Chairman, when we are in a period such as the present, I think it is incumbent upon all of us, not only the Members of Congress but every man, woman, and child in the United States—to develop a degree of statesmanship with respect to our attitude about Government spending and fiscal responsibility that we have not yet attained in the history of the United States. I am not saying that, Mr. Chairman, because I am so concerned about the immediate situation, but because I am concerned about the trends of the immediate situation.

Mr. Chairman, it has been said that we will have a deficit in the fiscal year 1959 of $12 billion. Oh, I could point out to you that that is the largest deficit that we have experienced at any time in our history except in periods of a shooting war. I could point out to you, Mr. Chairman, that that deficit results from the highest level of Federal spending that has ever occurred in our history during any period of time when we were not involved in a shooting war. But those are facts which every Member of this House knows. We are facing a situation head on today which none of us relishes but which we cannot duck.

We are now at a level of Federal spending, Mr. Chairman, estimated by the Director of the Bureau of the Budget for the fiscal year 1959 to approximate $79 billion. In answer to my questions during the course of the consideration of this measure in the committee the Director said that in all probability, for purposes of our consideration with respect to the debt ceiling, we would be safer to assume a level of Federal spending at $80 billion for this fiscal year instead of $79 billion. At the same time revenues have dropped from an estimate, in January for this fiscal year of $74 billion plus to $67 billion. When we expected in January to have a surplus of $400 million in the fiscal year 1959, the facts are that present estimates indicate a $12 billion deficit.

I can assure you that I could sleep better and I am sure the country would be less concerned, if I could tell you today that this is a temporary situation and one from which we will recover at the end of this fiscal year. In the hearings I asked of the Director of the Bureau of the Budget how soon, after we once attain a level of spending of $80 billion a year, can we get below that level of spending without a disarmament program or something of that sort? Will we do it in the next 4 or 5 years? Should we not realistically face the future with the thought in mind that we are likely to spend in the course of 5 fiscal years, including the present one, approximately $400 billion without getting into any open conflict?

The Director of the Bureau of the Budget indicated in his answer that it was more than a possibility. I know, as we sit here today thinking of these serious matters that during that same period of time existing tax rates will not yield $400 billion. So it is quite evident, as we ask you today to raise the limit to $288 billion that we cannot in truth tell you that this will solve the situation for the years beyond June 30, 1959.

The Secretary of the Treasury told us very frankly in the course of the hearings that this entire matter of the debt ceiling would have to be again reviewed by the Congress next year and as we start another fiscal year, 1960. What will that type of Federal spending, and the deficits that it contemplates, do to this economy? What will that rate of spending do to this economy? I do not know for certain.

I have some ideas. It could let loose inflationary pressures that in turn will be emulated by business and labor. The result could be that during the course of the next several years we will see rises in prices such as we have not seen in peacetime.

Mr. Chairman, in view of the gravity of the problems with which we are dealing today, I hope there will be a development of a degree of statesmanship and reality on the part of every man and woman in all walks of life. I hope that they will not continue to believe that that man or woman who merely asks for their support on the basis of getting more and more from the Federal Treasury will in the end do them the service that the request purports to do. I hope.

Yes; this is a serious matter today. Maybe we should have brought this bill to you earlier in the year, because, certainly, it was clear to us in March and April that we would be here before the adjournment of the Congress with this request. We indicated on the floor of the House during debate on the tax extension bill that we would be back. But under the circumstances, there is nothing we can do but face up to the fact that the obligations exist and we must pay the piper. The money has nearly all been appropriated. We cannot pay through revenues collected from our system of taxation. We must borrow this additional amount in order to meet the bills in this fiscal year.

Mr. REED. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, this debate today reminds me of a story that I think I may have told on the floor once before.

I do not know how many of you have even been up around Buffalo, N. Y., especially over in Black Rock, where you look out upon the placid Niagara River. It is a beautiful sight. It is a tempting sight, because there are boats there that you can rent and go out for a ride, if you are experienced and know what you are doing when you get on that river. The scenery there is very beautiful.

One day a group of people came there who were not familiar with the river. They saw it, and they had their luncheons with them, and some musical instruments, banjos and guitars. They rented a boat. They got out on the river, and the current took them quietly along. They did not have to work.

They had gone for a short time down the river when they commenced to go a little faster. Suddenly somebody on the shore shouted to them, "Hey, there."

5. FISHERIES. The Interstate and Foreign Commerce Committee reported with amendments S. 3229, the proposed Federal Fisheries Assistance Act of 1959 (S. Rept. 2334). p. 15664

6. COTTON; RICE. Sen. Jordan's name was added as cosponsor of S. J. Res. 196, to extend for one year the minimum acreage allotments for cotton and rice with price supports from 80 to 90% of parity. p. 15672

7. TRANSPORTATION. Concurred in the House amendment to S. 377, to provide a 3-year statute of limitations on actions involving transportation of property and passengers of the Government. This bill will now be sent to the President. pp. 15683-4

8. REA. Sen. Aiken inserted the July 21 ruling of the Comptroller General and Under Secretary Morse's Aug. 7 reply, regarding the legality of loans to the Central Iowa Power Cooperative. The GAO decision would forbid loans for extension of service to persons who are actually without central station service if they are located in an area claimed to be served by a power supplier which states it is willing to serve such unserved persons. pp. 15674-80

9. SURPLUS COMMODITIES; FOREIGN AID. Sen. Humphrey inserted an article ascribing recent outbreaks in South America to poor diets, and stated that extension of Public Law 480 would help in carrying cut our foreign policy in South America. pp. 15697-8

10. LEGISLATIVE PROGRAM. S. 4237, the national defense education bill, was made the Senate's unfinished business. Sen. Johnson announced that the supplemental appropriation bill would be considered as soon as it was reported and cleared for consideration, and that later in the week he expected the Senate to consider the public debt limit increase bill, the foreign aid appropriation bill, and the renogotiation bill. pp. 15814-15

HOUSE

11. MEATPACKERS. Passed under suspension of the rules H. R. 9020, to transfer certain functions under the Packers and Stockyards Act from this Department to the Federal Trade Commission. (pp. 15634-43) Rep. Poage asked unanimous consent to take up S. 1356, a similar bill, and pass it with an amendment substituting the language of H. R. 9020 as passed. Reps. Dorn, S. C., and Harvey objected to this request. Rep. Cooley asked that the objections be withdrawn so that the bill could go to conference immediately. (p. 15643)

12. FORESTRY. Received the conference report on S. 3051, to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing alternatives for private or Federal acquisition of the part of the tribal forest that must be sold (H. Rept. 2544). (pp. 15571-72, 15560) As reported the bill provides that private purchasers of portions of the tribal forest must agree to manage them "as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber," establishes April 1, 1961, as the date on which the Secretary of Agriculture shall take title for the U. S. to any forest units which are not purchases by private companies, and retains the House amendments providing for review of the appraisal of the Klamath Tribe's resources, for deferring sale of any forest units until April 1, 1959, and for termination of the management specialists' contract.

Digest of CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

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OFFICE OF BUDGET AND FINANCE
(For Department Staff Only)

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SENATE

1. EXCISE TAXES. Passed with amendments H. R. 7125, to make technical changes in the Federal excise tax laws. Senate conferees were appointed. pp. 15684-97, 15705-7, 15708-23, 15730-4

2. TAXATION. Passed with amendments H. R. 8381, to make technical changes in the Internal Revenue Code of 1954. Senate conferees were appointed. pp. 15728-9, 15735-57, 15759-814

3. APPROPRIATIONS. The Appropriations Committee ordered reported with amendments H. R. 13450, the supplemental appropriation bill for 1959. p. D833

4. MINERAL CLAIMS. Concurred in the House amendment to S. 3199, to specify the period for doing annual assessment work on unpatented mineral claims and suspending such work for the year ending July 1, 1958. This bill will now be sent to the President. pp. 15815-16

says, although his union people are certain to get their pay boosts, the well-being of the industry must be protected, too.

The wire also went to A. J. Martin, director of labor relations of the Manufacturers Institute. He will head the employer delegation at the talks.

Both Minton and Martin are keeping their agenda off the record—but Mr. Minton points to the record. Twenty billion bottles is a lot of glass and the folks feel that they sell that many because of intensive publicity campaigns by the union as well as the industry to increase public demands for foods and beverages packed in glass.

These union glass blowers are great believers in blowing their own industry's horn to draw the public from other types of materials. Recently Mr. Minton learned that a fiberglass boat company in a Midwest State was being scorched down the neck by the hot breath of its creditors. Jobs of Minton's members were at stake. The union voted $25,000 for a public relations drive by the firm. Today the company is prospering. It has tripled its employment rolls. More people are buying fiberglass boats this summer.

The fiberglass business is growing and the union people hope it will be part of the antidote to any recession in their field. Not only is the fiberglass used in furniture, but a Mason City, Iowa, firm now is selling a line of fiberglass truck fenders.

Most of the union's promotion is aimed at convincing labor's 18 million members to go out and insist on glass. They're not expected to buy glass truck fenders, but there's food, beer, cosmetics, etc.

Watch Lee Minton. He's not exactly a newcomer. He took office 12 years ago. But the public gets itself all wrapped up in the giants who tear across the front pages because they're turbulent news. Well, this is quiet, but it is bread and butter stuff. And that makes Brother Minton big news in this corner.

NOMINATION OF RUSSELL L. RILEY

Mr. MANSFIELD. Mr. President, because the junior Senator from Arkansas [Mr. FULBRIGHT] is under doctor's orders not to use his voice for a short period, I ask unanimous consent that a statement which he wished to deliver regarding the appointment of Mr. Russell L. Riley, of Missouri, to be Consul General of the United States in Malta, be read by the reading clerk.

There being no objection, the address was read as follows:

Mr. FULBRIGHT. Mr. President, on August 6, 1958, the Senate received several executive nominations to the Diplomatic and Foreign Service. Among the nominations was one about which I wish to comment briefly; that of Russell L. Riley, of Missouri, to be Consul General of the United States in Malta.

The name of Russell Riley is well known to those of my colleagues in the Congress who serve on the Foreign Relations and Appropriations Committees of the Senate, and the Foreign Affairs and Appropriations Committees of the House of Representatives. Mr. Riley, who has, for the past several years, so ably directed the International Educational Exchange Service of the Department of State, appeared each year before these committees to present the program of the Service. I have no doubt the members of these committees would agree with me that Mr. Riley was always thoroughly prepared, well informed, forthright, and most competent in his appearances before the committees in behalf of the programs of the International Educational Exchange Service.

Because I know Russell Riley personally, as well as having had an opportunity to observe at close hand his professional capabilities, and because he made significant contributions to the effectiveness of the programs for which he was responsible, I wish to outline for those who may not have known him so well something of his background:

Mr. Riley was born in Missouri, and is a graduate of the University of Missouri.

His Government service began in 1938 with the Social Security Board.

Mr. Riley has been active in the United States Army Reserve Officers Corps for over 20 years, and served as an artillery officer during World War II (1941–46) in the European theater, attaining the rank of lieutenant colonel.

He joined the Office of Educational Exchange of the Department of State in 1948, and served as Assistant Chief of the Division of Libraries and Institutes in 1949.

During the Korean conflict Mr. Riley resigned from the Department of State to enter emergency service as Director of Personnel for the Economic Stabilization Agency.

He returned to the Office of Educational Exchange as its Deputy Director in 1951 and became Director of the International Educational Exchange Service in 1952. He is now a member of the Foreign Service and will soon take up his first overseas assignment as consul general in Malta.

In the 10 years that Mr. Riley has been associated with the exchange programs, great expansion and consequent problems have been the order of the day.

In 1948 there were exchanges under the Fulbright Act with only 4 countries, and about 100 people were exchanged. In 1958 there were exchanges under the Fulbright Act with 33 countries, providing opportunities for about 4,000 people.

In 1948 the Smith-Mundt Act has just been signed and the only exchanges exclusive of those under the Fulbright Act were with the 20 other republics of this hemisphere. In 1958 the total exchange program under the provisions of the Smith-Mundt Act extend to nearly 100 countries and dependent territories.

During Mr. Riley's association with this program a number of special exchange activities have been added to the responsibilities of the International Educational Exchange Service—the transfer of the exchange programs with Austria, Germany, and Japan from the Department of the Army to the Department of State; administration of the special exchange program with Finland, utilizing payments on that country's World War I debt to the United States—legislation sponsored by Senator J. ALEXANDER SMITH; the special exchange program with India utilizing payments on the wheat loan to that country; and the special program with Israel using currency derived from the informational mediums guaranty program.

The matter of obtaining foreign currency for continuation and expansion of exchanges under the Fulbright Act has been a problem of considerable importance during the past several years, due to the shrinkage of surplus property funds available and efforts to obtain other funds, primarily those resulting from the sale of surplus agricultural commodities under Public Law 480 of the 83d Congress.

Also significant is the considerable dollar support which has been obtained for the exchange program. At present the IEES budget meets only about 34 percent of the cost of the grants contemplated. The balance of these costs are supplied by non-United States Government sources—primarily the universities, foundations, and private organizations in this country.

It is noteworthy that although budgets for the educational exchange program have shown no marked increase in the past 5 years, our neighbors to the south have not been neglected. The exchange program with the other American republics has been more than tripled in the past 5 years—from about 200 exchanges in 1953 to approximately 700 in 1957. Efforts to utilize foreign currency under Public Law 480 in this area have resulted in 6 active Fulbright programs in Latin America at present and prospects for several others in the next year or two.

The growth of the exchange programs during the years of Russell Riley's guidance of IEES is strong evidence of this man's capability and devotion to duty. For much of the success of the programs, Russell Riley's directorship is responsible. While I regret that he will no longer be serving as Director of IEES, I am confident he will, as consul general of the United States in Malta, serve the interests of this country commendably. I am pleased to speak in Russell Riley's behalf. I would be much more pleased if we had more men of his caliber in our Foreign Service.

AMENDMENT OF INTERSTATE COMMERCE ACT TO PROVIDE A 2-YEAR STATUTE OF LIMITATIONS IN CERTAIN CASES

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 377) to amend the Interstate Commerce Act to provide a 2-year statute of limitations on actions involving transportation of property and passengers of the United States Government and to provide that deductions for overcharges by the United States shall be made within 3 years from time of payment, which were, to strike out all after the enacting clause and insert:

That the Interstate Commerce Act, as amended, is amended as follows:

(1) Amend section 16 (3) as follows: In subparagraph (a) strike out "2 years" and insert "3 years"; in subparagraph (c) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in subparagraph (d) strike out the word "2-year" the second time it occurs and insert "3-year."

(2) Add the following new subparagraph (i) to section 16 (3):

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with

any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(3) Amend section 204a as follows: In paragraph (1) strike out "2 years" and insert "3 years"; in paragraph (2) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in paragraph (3) strike out "2-year" and insert "3-year."

(4) Add the following new paragraph (7) to section 204a:

"(7) The provisions of this scction 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportaiton of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(5) Amend section 308 (f) (1) as follows: In subparagraph (A) strike out "2 years" and insert "3 years"; in subparagraph (C) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in subparagraph (D) strike out the word "2-year" the second time it occurs and insert "3-year."

(6) Add the following new subparagraph (5) to section 308 (f):

"(5) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

(7) Amend section 406a as follows: In paragraph (1) strike out "2 years" and insert "3 years"; in paragraph (2) strike out "2 years" and insert "3 years", and strike out "2-year" and insert "3-year"; and in paragraph (3) strike out "2-year" and insert "3-year."

(8) Add the following new paragraph (7) to section 406a:

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include 3 years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

(1) By striking the words "overpayment to" and substituting therefor the words "overcharges by."

(2) By adding a new sentence at the end of the section as follows: "The term 'overcharges' shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act: *Provided, however,* That such deductions shall be made within 3 years (not including any time of war) from the time of payment of bills: *Provided further,* That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within 3 years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

SEC. 3. The provisions of this act which amend the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this act. The provision of this act which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this act.

And to amend the title so as to read:

An act to amend the Interstate Commerce Act and the Transportation Act of 1940, with respect to periods of limitation applicable to action or claims, including those by or against the United States, for recovery of charges for the transportation of persons or property, and for other purposes.

Mr. MAGNUSON. Mr. President, the only difference between the Senate and the House amendment bill is that the Senate bill provides a period of 2 years, whereas the House amendment provides a 3-year period. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington.

The motion was agreed to.

TECHNICAL CHANGES IN EXCISE TAX LAW

Mr. MANSFIELD. Mr. President, has morning business been concluded?

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

Without objection, the Chair lays before the Senate the unfinished business, which is H. R. 7215.

The Senate resumed the consideration of the bill (H. R. 7125) to make technical changes in the Federal excise tax laws, and for other purposes.

Mr. MALONE obtained the floor.

Mr. MANSFIELD. Mr. President, will the Senator from Nevada yield so that I may suggest the absence of a quorum?

Mr. MALONE. I yield for that purpose.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill is open for further amendment.

WARTIME EXCISE TAXES—SO-CALLED CABARET TAX—TAX ON MUSICIANS AND PATRONS

Mr. MALONE. Mr. President, for 12 years I have had before the Committee on Finance a bill to repeal all wartime excise taxes. The reason is that wartime excise taxes are hastily improvised measures to win a war.

No one pays much attention to them at the time they are imposed, because each person seeks to do his part in wartime, whether in business or serving in the Armed Forces.

But following the close of hostilities, it has always been my conviction that, if the money were still needed by the Government, the hastily imposed wartime excise taxes should be repealed, and the tax distributed more evenly.

As all Senators well know, it is almost impossible to separate a tax from the tax rolls once it has been placed there. It is hard to realize, even as a Member of Congress, that regardless of how unfair a tax may be, for 24 years the White House, the Cabinet, and, unfortunately, many Members of Congress are reluctant to part with the income; and all others who benefit from the taxes are vocal against their removal.

During this 12-year period, we have broken through spasmodically and have removed certain taxes. But to do so has required continual vigilance and pressure upon committees, and the opposition, if you please, of the White House and the Cabinet and every other agency which profits from the tax, regardless of the harm the tax may be doing to individual American citizens or to industry.

A few years ago the Committee on Finance approved the repeal of the tax on motion-picture theater tickets costing 90 cents or less. It was said that many of the small theaters were saved. Some of them are still closing, however. But it was said that theaters, not only in Nevada, but all over the Nation, would benefit by the removal of that 20-percent tax.

Recently, at this session, Congress removed the tax on motion-picture theater tickets beginning at $1 or less. The difference between this amendment is that if a ticket cost more than 90 cents, the purchaser paid the cost of the entire ticket plus the tax. But the $1-and-under provision removes the tax up to $1, regardless of the cost of the ticket.

Recently, too, the Committee on Finance approved the repeal of the 3-percent tax on freight and the 10-percent tax on travel. The Senate passed that bill, removing teeth, but in conference with the House the 10-percent travel

Public Law 85-762
85th Congress, S. 377
August 26, 1958

AN ACT

To amend the Interstate Commerce Act and the Transportation Act of 1940, with respect to periods of limitation applicable to actions or claims, including those by or against the United States, for recovery of charges for the transportation of persons or property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, is amended as follows:

Interstate Commerce Act, amendment.

(1) Amend section 16 (3) as follows: In subparagraph (a) strike out "two years" and insert "three years"; in subparagraph (c) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in subparagraph (d) strike out the word "two-year" the second time it occurs and insert "three-year".

Claims, time limitation.
41 Stat. 491; 54 Stat. 912.
49 USC 16.

(2) Add the following new subparagraph (i) to section 16 (3):

"(i) The provisions of this paragraph (3) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

72 Stat. 859.
72 Stat. 860.
54 Stat. 955.

(3) Amend section 204a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

63 Stat. 280.
49 USC 304a.

(4) Add the following new paragraph (7) to section 204a:

"(7) The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

49 USC 304a.
54 Stat. 955.

(5) Amend section 308 (f) (1) as follows: In subparagraph (A) strike out "two years" and insert "three years"; in subparagraph (C) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in subparagraph (D) strike out the word "two-year" the second time it occurs and insert "three-year".

54 Stat. 940.
49 USC 908.

(6) Add the following new subparagraph (5) to section 308 (f):

54 Stat. 940.
49 USC 908.

"(5) The provisions of this paragraph (f) shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before the Commission or any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of

such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

54 Stat. 955.

63 Stat. 281.

49 USC 1006a.

(7) Amend section 406a as follows: In paragraph (1) strike out "two years" and insert "three years"; in paragraph (2) strike out "two years" and insert "three years", and strike out "two-year" and insert "three-year"; and in paragraph (3) strike out "two-year" and insert "three-year".

(8) Add the following new paragraph (7) to section 406a:

49 USC 1006a.

"(7) The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however*, That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U. S. C. 66), whichever is later."

54 Stat. 955.

54 Stat. 955.

SEC. 2. Section 322 of the Transportation Act of 1940 (49 U. S. C. 66) is amended as follows:

72 Stat. 860.

72 Stat. 861.

(1) By striking the words "overpayment to" and substituting therefor the words "overcharges by".

(2) By adding a new sentence at the end of the section as follows: "The term 'overcharges' shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission and the Civil Aeronautics Board and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 22 of the Interstate Commerce Act: *Provided, however*, That such deductions shall be made within three years (not including any time of war) from the time of payment of bills: *Provided further*, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of war) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

49 USC 22.

SEC. 3. The provisions of this Act which amend the Interstate Commerce Act, as amended, shall apply only to causes of action which accrue on or after the effective date of this Act. The provision of this Act which amends section 322 of the Transportation Act of 1940 (49 U. S. C. 66) shall apply only to transportation performed and payment made therefor subsequent to the effective date of this Act.

49 USC 27 and note.

54 Stat. 955.

Approved August 26, 1958.